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Agriculture

7

PARTS 1120 TO 1199

Milk Orders—Western Region

Revised as of January 1, 1989

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Agriculture

7

PARTS 1120 TO 1199

Milk Orders—Western Region

Revised as of January 1, 1989

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1934

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

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To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 1120.1 *refers to Title 7, Part 1120, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	**as of January 1**
Title 17 through Title 27	**as of April 1**
Title 28 through Title 41	**as of July 1**
Title 42 through Title 50	**as of October 1**

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, January 1, 1989), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

MARTHA L. GIRARD
Acting Director,
Office of the Federal Register.

January 1, 1989.

THIS TITLE

Title 7—AGRICULTURE is composed of nineteen volumes. The parts in these volumes are arranged in the following order: Parts 0-26, 27-45, 46-51, Part 52, 53-209, 210-299, 300-399, 400-699, 700-896, 900-999, 1000-1059, 1060-1119, 1120-1199, 1200-1499, 1500-1899, 1900-1939, 1940-1949, 1950-1999, and Part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1989.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210-299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing Parts 400-699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing Parts 900-999. All marketing agreements and orders for milk appear in three volumes containing Parts 1000-1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000-1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060-1199, as a convenience to the user.

Redesignation tables appear in the Finding Aids section of the volumes containing Parts 27-45, Parts 53-209, Parts 210-299, and Parts 700-899.

For this volume Suzanne Meyer was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Ruth C. Pontius.

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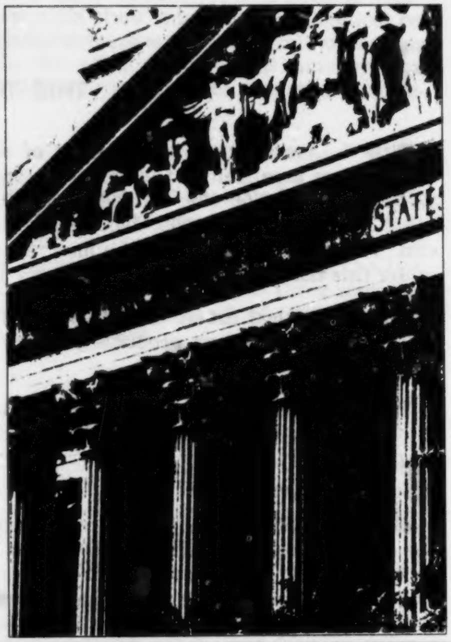

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Title 7—Agriculture

(This book contains Parts 1120 to 1199)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE (Continued):

Part

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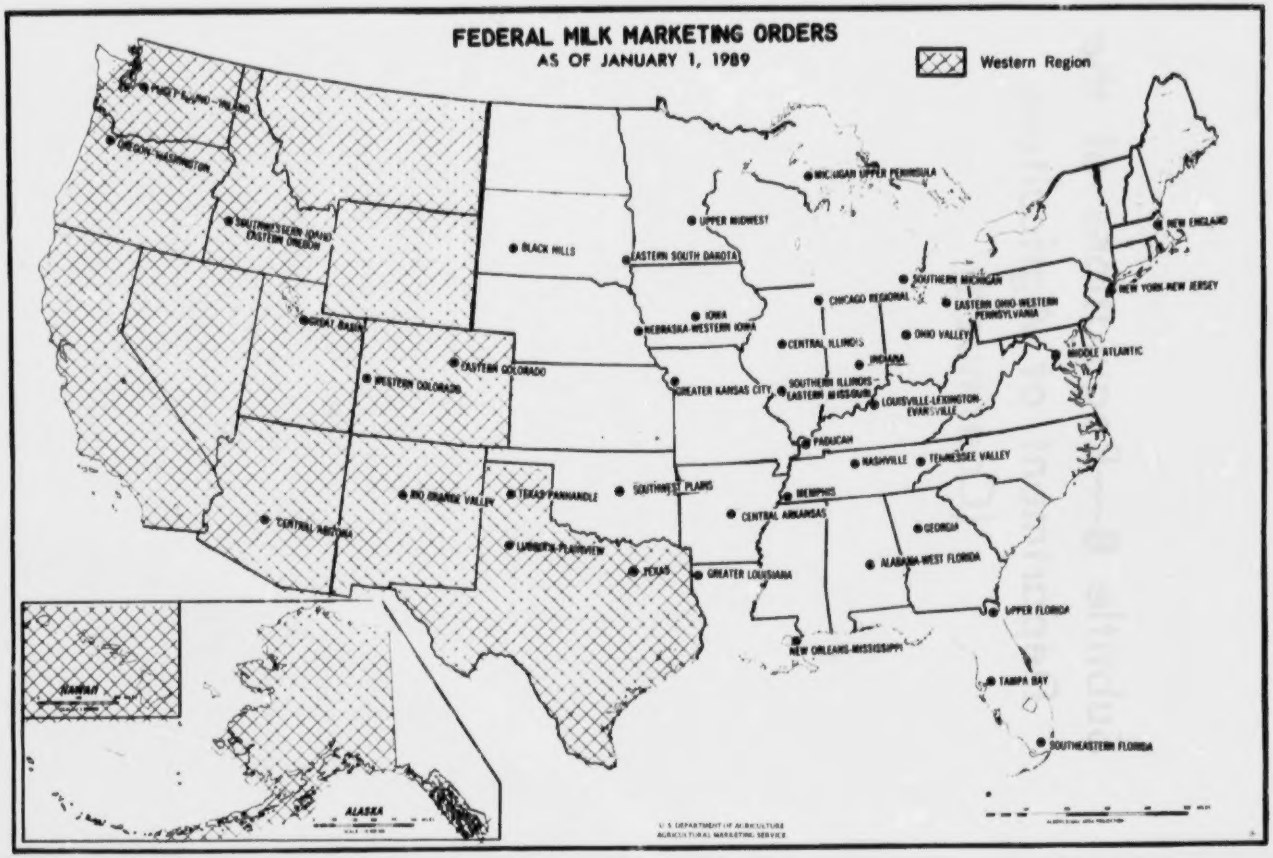
Subtitle B—Regulations of the Department of Agriculture (Continued)

FEDERAL MILK MARKETING ORDERS
AS OF JANUARY 1, 1989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U. S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

CHAPTER X—AGRICULTURAL MARKETING SERVICE

(Marketing Agreements and Orders; Milk)

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NOTE

7 CFR Part 900, the general regulations with respect to marketing agreements and orders, is set forth for the convenience of users of this volume.

PART 900—GENERAL REGULATIONS

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SOURCE: 25 FR 5907, June 28, 1960, unless otherwise noted.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.2 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The terms Administrative Law Judge or Judge means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to conduct the proceeding.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(h) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(i) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act.

(j) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act, and after notice and hearing as required by said section.

(k) The term "proceeding" means a proceeding upon the basis of which a marketing agreement may be entered into or a marketing order may be issued.

(l) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, DC.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961, 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973]

§ 900.3 Proposals.

(a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

§ 900.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided in this subpart, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: *Provided,* That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a true copy of the notice of hearing to each of the persons known to the Administrator, to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers in the area proposed to be subjected to regulation as reasonably will tend to bring the notice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine, should be notified.

(2) Legal notice of the hearing shall be deemed to be given if such notice is given in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 900.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.7 Motions and requests.

(a) *General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript. Except as provided in § 900.15(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to his certification of the transcript pursuant to § 900.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 900.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 900.4 (relating to the giving of notice of the hearing): *Provided,* That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* Wherever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative. In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 900.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

[25 FR 5907, June 28, 1960, as amended at 37 FR 1103, Jan. 25, 1972]

§ 900.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 900.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 900.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 900.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

§ 900.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor;

(2) A ruling upon each proposed finding or conclusion submitted by interested persons, and

(3) An appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision, the Administrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 900.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: all motions and requests filed with the hearing clerk and rulings thereon; the certified transcripts; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 900.13a Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include (a) a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a marketing agreement or marketing order or (2) a marketing agreement and, if the findings upon the record so warrant, a marketing order, the provisions of which shall be set forth directly or by reference, regulating the handling of the commodity or product in the same manner and to the same extent as such marketing agreement, which order shall be complete except for its effective date and any determinations to be made under § 900.14(b) or § 900.14(c): *Provided*, That such marketing order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 900.14(b) or § 900.14(c) have been met.

§ 900.14 Execution and issuance of marketing agreements and marketing orders.

(a) *Execution and issuance of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem sufficient shall have executed the agreement, the Secretary shall execute the agreement. After execution of a marketing agreement, such agreement shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. The marketing agreement shall not become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c (8) of the Act, he shall, if he finds that it will tend to effectuate the purposes of the Act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a: *Provided*, That the issuance of such order shall have been approved or favored by producers as required by section 8c (8) of the Act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to sign the marketing agreement, as provided in section 8c (8) of the Act, the Secretary makes the determinations required under section 8c (9) of the Act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a.

(d) *Effective date of marketing order.* No marketing order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: *Provided*, That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.

(e) *Notice of issuance.* After issuance of a marketing order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. (7 U.S.C. 610(c).)

[25 FR 5907, June 28, 1960, as amended at 53 FR 15659, May 3, 1988]

§ 900.15 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in § 900.17 shall be met by filing a true copy thereof with the hearing clerk.

(b) *Extensions of time.* The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge (before the record is certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions of this subpart to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965]

§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided,* That procedural matters and status reports shall not be included within this limitation; and *Provided further,* That an employee of the Department who is or may reasonably be excepted to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided,* That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders

AUTHORITY: Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 900.50 Words in the singular form.

Words in this subpart in the singlar form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. and Sup. 601);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The terms "administrative law judge" or "judge" means any Administrative Law Judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act;

(i) The term "handler" means any person who, by the terms of a marketing order, is subject thereto, or to whom a marketing order is sought to be made applicable;

(j) The term "proceeding" means a proceeding before the Secretary arising under subsection (15)(A) of section 8c of the Act;

(k) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(l) The term "party" includes the Department;

(m) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, DC;

(n) [Reserved]

(o) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rules on findings, conclusions and orders submitted by the parties;

(p) The term "petition" includes an amended petition.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961, 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973]

§ 900.52 Institution of proceeding.

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Motion to dismiss petition*—(1) *Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, he may, within thirty days after the filing of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the Judge for his consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the hearing clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65: *Provided,* That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the hearing clerk not later than the time fixed for filing papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.52a Answer to petition.

(a) *Time of filing.* Within 30 days after the filing of the petition, the Administrator shall file an answer thereto: *Provided,* That if a motion to dismiss the petition, in whole or in part, is made pursuant to § 900.52(c), the answer shall be filed within 15 days after the filing of an order of the administrative law judge denying the motion or granting the motion with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) *Contents.* The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.

[25 FR 5907, June 28, 1960]

§ 900.52b Amended pleadings.

At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the judge may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment of subsequent to the filing of an answer may be made only with leave of the judge or with the written consent of the adverse party.

§ 900.53 Withdrawal of petition.

If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the judge) a written request for permission to withdraw. The judge may, in his discretion, thereupon dismiss the petition without further procedure: *Provided,* That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

§ 900.54 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.55 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) *Conduct.* The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

(1) Rule upon motions and requests;

(2) Adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;

(5) Examine witnesses and receive evidence;

(6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Consolidate hearings upon two or more petitions pertaining to the same order;

(10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(e) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.56 Consolidated hearings.

At the discretion of the judge, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

§ 900.57 Intervention.

Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

§ 900.58 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the judge, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the judge shall submit a written summary for the record if any action is taken.

§ 900.59 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) The judge is authorized to rule upon all motions and requests filed or made prior to the transmittal by the hearing clerk to the Secretary of the record as provided in this subpart. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification of motions.* The submission or certification of any motion, request, objection, or other question to the Secretary shall be in the discretion of the judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.60 Oral hearings before judge.

(a) *Time and place.* The judge shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the judge, who, in

ich event, shall file with the hearing clerk
notice of the change. Such notice shall be
erved upon the parties, unless it is made
uring the course of an oral hearing and
ade a part of the transcript.

(b) *Appearances*—(1) *Representation.* In
ny proceeding under the act, the parties
ay appear in person or by counsel or other
presentative. The Department, if repre-
nted by counsel, shall be represented by
attorney assigned by the General Coun-
l of the Department, and such attorney
all present or supervise the presentation
the position of the Department.

(2) *Debarment of counsel or representa-
ve.* Whenever, while a proceeding is pend-
g before him, the judge finds that a
erson acting as counsel or representative
r any party to the proceeding is guilty of
ethical or unprofessional conduct, the
dge may order that such person be pre-
uded from further acting as counsel or
presentative in such proceeding. An
peal to the Secretary may be taken from
y such order, but the proceeding shall not
delayed or suspended pending disposition
the appeal: *Provided,* That the judge may
spend the proceeding for a reasonable
ne for the purpose of enabling the client
obtain other counsel or representative. In
se the judge has issued an order preclud-
g a person from further acting as counsel
representative in the proceeding, the
dge, within a reasonable time thereafter,
all submit to the Secretary a report of the
cts and circumstances surrounding the is-
ance of the order and shall recommend
at action the Secretary should take re-
ecting the appearance of such person as
unsel or representative in other proceed-
gs before the Secretary. Thereafter, the
cretary may, after notice and an opportu-
ty for hearing, issue such order respecting
e appearance of such person as counsel or
presentative in proceedings before the
cretary as the Secretary finds to be ap-
opriate.

3) *Failure to appear.* If the petitioner,
ter being duly notified, fails to appear at
e hearing, he shall be deemed to have au-
orized the dismissal of the proceeding,
thout further procedure, and with or
thout prejudice as the judge may deter-
ne. In the event that the petitioner ap-
ars at the hearing and no representative
the Department appears, the judge shall
oceed ex parte to hear the evidence of the
titioner. *Provided,* That failure on the
rt of such representative of the Depart-
ent to appear at a hearing shall not be
emed to be waiver of the Department's
ht to file suggested findings of fact, con-
sions and order; to be served with a copy
the judge's initial decision and to appeal
the Secretary with respect thereto.

(c) *Order of proceeding.* Except as may be determined otherwise by the judge, the petitioner shall proceed first at the hearing.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

(ii) Any witness may, in the discretion of the judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) The judge shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or any other ruling of the judge, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow which may be pursued in an appeal pursuant to § 900.65 by the party adversely affected by the judge's ruling.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner hereinafter provided in and subject to the provisions of § 900.61.

(4) *Affidavits.* Except as is otherwise provided in this subpart, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(6) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the judge finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the judge for the use of each other party to the proceeding. The judge shall advise the parties as to the exact number of copies which will be required to be filed and shall make and

have noted on the record the proper distribution of the copies. If the testimony of a witness refers to a statute, or to a report, document, or transcript, the judge, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(7) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the judge's report or the tentative order or otherwise, of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order) shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if on appeal the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(e) [Reserved]

(f) *Transcript.* (1) During the period in which the proceeding has an active status the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(2) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at the rate (i any) provided in the contract between the reporter and the Secretary.

[25 FR 5907, June 28, 1960, as amended a 38 FR 29798, Oct. 29, 1973]

§ 900.61 Depositions.

(a) *Procedure in lieu of deposition.* Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the judge shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the judge may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer"), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Judge's order for taking deposition.* If, after the examination of the application, the judge is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) The time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of officer.* The deposition shall be taken before the judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(e) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written interrogatories to the officer prior to the examination and the officer shall propound such interrogatories to the deponent.

(2) The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the judge, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding under the act if the judge finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness by subpena but has been unable to do so; or (5) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken, and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition, or any part thereof, in evidence.

§ 900.62 Subpenas.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the judge, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the judge upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpena by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided in this paragraph and by the signed return post-office receipt: *Provided,* That, if the subpena is issued on behalf of the Department, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 900.63 Fees and mileage.

Witnesses who are subpenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpenaed on behalf of the Department, shall be proved before the person issuing the subpena, and, as to witnesses subpenaed on behalf of any other party, shall be presented to such party.

§ 900.64 The Administrative Law Judge's Decision.

(a) *Corrections to and certification of transcript.* (1) At such time as the judge may specify, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, the parties may file with the judge proposed corrections to the transcript. (2) As soon as practicable, after the filing of proposed findings of fact, conclusions and order, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) *Proposed findings of fact, conclusions, and orders.* Within 10 days (unless the judge shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions, and order, based solely upon the evidence of record, and briefs in support thereof.

(c) *Administrative Law Judge's Decision.* The judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare upon the basis of the record, and shall file with the hearing clerk, his initial decision, a copy of which shall be served by the hearing clerk, upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding: *Provided, however,* That no decision shall be final for the purpose of judicial review except a final decision issued by the Secretary pursuant to an appeal by a party to the proceeding.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29799, Oct. 29, 1973]

§ 900.65 Appeals to Secretary: transmittal of record.

(a) *Filing of appeal.* Any party who disagrees with a judge's decision or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the hearing clerk within 30 days after service of said decision upon said party. E
issue set forth in the appeal, and the a
ments thereon, shall be separately n
bered; shall be plainly and concisely sta
and shall contain detailed citations of
record, statutes, regulations and authori
being relied upon in support thereof. T
appeal petition shall be served upon
other party to the proceeding by the he
ing clerk.

(b) *Argument before Secretary*—(1) *O*
argument. A party bringing an appeal m
request within the prescribed time peri
for filing such appeal, an opportunity
oral argument before the Secretary. Failu
to make such request in writing, within t
prescribed time period, shall be deemed
waiver of oral argument. The Secretary,
his discretion, may grant, refuse or lin
any request for oral argument on appeal.

(2) *Scope of argument.* Argument to
heard on appeal, whether oral or in a wr
ten brief, shall be limited to the issu
raised by the appeal, except that if the Se
retary determines that additional issu
should be argued, the parties shall be giv
reasonable notice of such determination,
as to permit preparation of adequate ar
ments on all the issues to be argued.

(c) *Response.* Within 20 days after servi
of an appeal brought by a party to the pr
ceeding, any other party may file a respon
in support of or in opposition to su
appeal.

(d) *Transmittal of record.* Whenever
appeal is filed by a party to the proceedi
the hearing clerk shall transmit to the Se
retary the record of the proceeding. Su
record shall include: the pleadings; any m
tions and requests filed, and the rulin
thereon; the transcript of the testimo
taken at the hearing, as well as the exhib
filed in connection therewith; any sta
ments filed under the shortened procedu
any documents or papers filed in connecti
with prehearing conferences; such propos
findings of fact, conclusions, and orders, a
briefs in support thereof, as may have be
filed in connection with the hearing; t
judge's initial decision; and the appeal pe
tion; briefs in support thereof, and
sponses thereto as may have been filed
the proceeding.

[38 FR 29799, Oct. 29, 1973]

§ 900.66 Consideration of appeal by the Sec
tary and issuance of final order.

(a) *Consideration of appeal.* As soon
practicable after the receipt of the reco
from the hearing clerk, or, in case oral arg
ment was had, as soon as practicable the
after, the Secretary, upon the basis of a
after due consideration of the record, sh
rule on the appeal. If the Secretary decid
that no change or modification of t

judge's decision is warranted, he may adopt the Judge's decision as the final order of the Secretary, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the merits of the proceeding with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. If, notwithstanding the foregoing provisions of this section, a memorandum or other communication from any party, or from any person acting on behalf of any party, which relates to the merits of the proceeding, receives the personal attention of the Secretary (or, if an official other than the Secretary is to issue the order, then of such other official) during the pendency of the proceeding, such memorandum or communication shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to file a reply thereto.

(b) *Issuance of final order.* A final order issued by the Secretary shall be filed with the hearing clerk, who shall serve it upon the parties: *Provided,* That, if the terms of the order differ substantially from those proposed in the decision of the judge, the Secretary shall, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written arguments or briefs in support of such exceptions. In such case, if exceptions are filed within a period of time (to be fixed by the Secretary but not to exceed 20 days) following the service of the tentative order, the Secretary shall give consideration, to and shall make such changes in the tentative order as he deems to be appropriate; otherwise, the tentative order shall become final, as of the day following the date of expiration of the period fixed for the filing of exceptions.

[38 FR 29799, Oct. 29, 1973]

§ 900.67 [Reserved]

§ 900.68 Applications for reopening hearings; for rehearings or rearguments of proceedings; or for reconsideration of orders.

(a) *Petition requisite*—(1) *Filing; service.* An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order shall be made by petition addressed to the Secretary and filed with the hearing clerk, who immediately shall notify and serve a copy thereof upon the other party to the proceeding. Every such petition shall state specifically the grounds relied upon.

(2) *Petitions to reopen hearings.* A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders.* A petition to rehear or reargue the proceeding or to reconsider the final order shall be filed within 15 days after the date of the service of such order. Every such petition shall state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 10 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce the decision granting or denying the petition. Unless the Secretary shall determine otherwise, the issuance or operation of the order shall not be stayed pending the decision of the Secretary upon the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere in this subpart, shall be followed.

§ 900.69 Filing; service; extensions of time; effective date of filing; and computation of time.

(a) *Filing; number of copies.* Except as provided otherwise herein, all documents or papers required or authorized in this subpart to be filed with the hearing clerk shall be filed in quadruplicate: *Provided,* That, if there are more than two parties to the proceeding, a sufficient number of additional copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized in this subpart to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Service; proof of service.* Copies of all such papers shall be served upon the parties by the hearing clerk, by the judge, or by some other employee of the Department or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence. Proof of service hereunder shall be made by the affidavit of the person who actually made the service. The affidavit contemplated herein shall be filed with the hearing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) *Extensions of time.* The time for the filing of any documents or papers required or authorized in this subpart to be filed may be extended upon (1) a written stipulation between the parties, or (2) upon the request of a party, by the judge before the transmittal of the record to the Secretary, or by the Secretary at any other time if, in the judgment of the Secretary or the judge, as the case may be, there is good reason for the extension.

(d) *Effective date of filing.* Any document or paper, except a petition filed pursuant to § 900.52, required or authorized under these rules to be filed shall be deemed to have been filed when it is postmarked, or when it is received by the hearing clerk. Any petition filed under § 900.52 shall be deemed to be filed when it is received by the hearing clerk.

(e) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such time shall be extended to include the next following business day.

§ 900.70 Applications for interim relief.

(a) *Filing the application.* A person who has filed a petition pursuant to § 900.52 may by separate application filed with the hearing clerk apply to the Secretary for an order postponing the effective date of, or suspending the application of, the marketing order or any provision thereof, or any obligation imposed in connection therewith, pending final determination of the proceeding.

(b) *Contents of the application.* The application shall contain a statement of the facts upon which the relief is requested, including any facts showing irreparable injury. The application must be signed and sworn to by the petitioner and any facts alleged therein which are not within his personal knowledge shall be supported by affidavits c
person or persons having personal kn
edge of such facts or by proper documen
ry evidence thereof.

(c) *Answer to application.* Immediat
upon receipt of the application, the hear
clerk shall transmit a copy thereof, toget
with all supporting papers, to the Admi
trator, who shall, within 20 days, or su
other time fixed by the Secretary, after
filing of the application file an ansv
thereto with the hearing clerk.

(d) *Contents of answer.* The answer sh
contain a statement of the objections,
any, of the Administrator to the applicati
for interim relief, and may be supported
affidavits and documentary evidence.

(e) *Transmittal to Secretary.* Upon rece
ing the answer of the Administrator or up
the expiration of the time for filing t
answer, the hearing clerk shall transmit
the Secretary for his decision all pape
filed in connection with the application.

(f) *Hearing and oral argument.* The Secr
tary may, in his discretion, permit oral arg
ment or the taking of testimony in conn
tion with such application. However, unle
written request therefor is filed with t
hearing clerk prior to the transmittal of t
papers to the Secretary, the parties shall
deemed to have waived oral argument a
the taking of testimony.

(g) *Decision by Secretary.* The Secreta
may grant or deny the application. A
action taken by the Secretary shall be
the form of an order filed with the heari
clerk and shall contain a brief statement
the reasons for the action taken. The he
ing clerk shall cause copies of the order
be served upon the parties.

§ 900.71 Hearing before Secretary.

The Secretary may act in the place a
stead of a judge in any proceeding hereu
der. When he so acts the hearing clerk sh
transmit the record to the Secretary at t
expiration of the period provided for t
filing of proposed findings of fact, conc
sions and orders, and the Secretary sh
thereupon, after due consideration of t
record, issue his final order in the procee
ing: *Provided,* That he may issue a tentati
order in which event the parties shall be
forded an opportunity to file appeals befo
the issuance of the final order.

Subpart—Procedure Governing Meetings To Arbitr
and Mediate Disputes Relating to Sales of Milk
Its Products

AUTHORITY: Sec. 3, 50 Stat. 248, 7 U.S.
671.

§ 900.100 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.101 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U.S.C. 671);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term "General Counsel" means the General Counsel of the Department;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term "Service" means the Agricultural Marketing Service.

(g) The term "Division" means the Dairy Division of the Service.

(h) The term "cooperative" means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term "arbitrator" means any officer or employee of the Service designated by the Administrator, pursuant to the act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term "mediator" means any officer or employee of the Service designated by the Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7797, Aug. 22, 1961, 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972]

§ 900.102 Filing of applications for mediation or arbitration.

All applications for mediation or arbitration, all submissions, and all correspondence regarding mediation or arbitration shall be addressed to the Secretary, attention of the Division.

§ 900.103 Application for mediation.

An application for mediation by cooperative shall be in writing and shall include the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, bylaws, and membership contract; information regarding the number of shares of outstanding stock and the approximate portion owned by active producers; a statement of the function performed in connection with the collective processing, preparing, handling, or marketing of milk or its products; and data relative to the distribution of membership by States, the distribution by States of plant facilities for collecting, processing, or disposing of milk or its products, and the business operations for the year last past, including the total quantity of milk and its products handled by the applicant and the proportion of that quantity that was sold in States other than the States of production;

(c) Suggested time and place for meeting between parties and mediator.

§ 900.104 Inquiry by the Administrator.

Upon receipt of an application for mediation, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 Notification.

The Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the Act and as to whether he will mediate.

§ 900.106 Assignment of mediator.

The Director of the Division shall assign a mediator, from the group designated by the Administrator, to act in such capacity.

§ 900.107 Meetings.

All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 Mediator's report.

The mediator, upon the completion of mediation proceedings, shall submit to the Administrator a complete report on such proceedings.

§ 900.109 Mediation agreement.

An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 Application for arbitration.

An application for arbitration by a cooperative shall be in writing and shall contain the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) The same information required under § 900.103(b);

(c) Concise statement of dispute to be submitted;

(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;

(f) Suggested time and place for arbitration hearing. The applicant shall send a copy of the application to each other party to the dispute.

§ 900.111 Inquiry by the Administrator.

Upon receipt of an application for arbitration, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists, to assist the parties in reducing the dispute to well-defined issues, and to select an arbitrator who would be satisfactory to all parties.

§ 900.112 Notification.

The Administrator, acting on behalf of the Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.

§ 900.113 Submission.

(a)(1) Within a reasonable time after the receipt of the Administrator's consent to arbitrate, the parties to the dispute shall file with the Administrator a formal submission, which shall contain the following information:

(i) Names in full of the parties;

(ii) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;

(iii) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in activities in the current of interstate or foreign commerce;

(iv) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute, and a statement as to the period of time during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;

(v) Name of arbitrator;

(vi) Time and place of arbitration, including street address;

(vii) Stipulation by the parties that they will produce any books, records, and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;

(viii) Agreement by the parties that they will consider the award as final and will comply therewith;

(ix) Stipulation by the parties that arbitration is to take place under rules and regulations issued by the Secretary, and that any such rules and regulations pertaining to mediation and arbitration shall be considered a part of the submission;

(x) Stipulation that a stenographic report of the proceedings must be made.

(2) The submission shall be signed by each party before a notary public, and when the signature is that of an agent of a corporation or cooperative association, the same shall be accompanied by evidence of the authority to sign.

(3) A submission may be withdrawn at any time before the award, and any question held by the arbitrator to be a separable question may be withdrawn before award by agreement of all parties. When any question is so withdrawn, the parties shall file with the arbitrator the agreement on that question reached by the parties, showing all the details thereof, and the arbitrator shall include it in the record of the arbitration.

§ 900.114 Designation of arbitrator.

The Administrator, after receiving the submission, will designate one or more persons to act as arbitrator.

§ 900.115 Hearing.

(a) The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

(b) Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

(c) All relevant and material evidence may be presented. The arbitrator shall not be bound by the legal rules of evidence.

(d) The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute unless the party producing the same consents to its examination by the other parties to the dispute.

(e) No evidence offered by one party shall be received except in the presence of all parties unless the parties so agree in a submission specifying the nature of the evidence to be received.

(f) Final determination as to what will be considered confidential information shall be made by the arbitrator.

(g) The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

(h) When more than two arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

(i) A stenographic record of all the proceedings during an arbitration must be made.

§ 900.116 Award.

(a) An award shall be made within ten days after the close of the hearing.

(1) The award shall be in writing and shall cover only points of dispute raised in the submission.

(2) The arbitrator, in making the award, may use his own technical knowledge in addition to the evidence submitted by the parties.

(3) The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among the parties upon notification thereof to the Administrator, unless or until the Administrator withdraws his approval.

(4) The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated the arbitrator shall sign in the presence of each other.

(5) Copies of the award shall be delivered to the parties by the Division.

§ 900.117 Approval of award.

The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, or evidence of misconduct upon the part of the arbitrator, or lack of evidence to support the award, or if the award provides for any unfair trade practice.

§ 900.118 Costs.

The parties jointly shall pay for the stenographic record. A copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Administrator, ultimately to be filed in the office of the hearing clerk. The arbitrator shall not receive compensation for parties to the dispute.

Subpart—Miscellaneous Regulations

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.200 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U.S.C. 601), as amended;

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term "General Counsel" means the General Counsel of the Department;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act;

(i) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act;

(j) The term "person" means any individual, corporation, partnership, association, or any other business unit;

(k) The term "official" means the Secretary, any officer, employee, or other person employed or appointed by the Department, and any agency or agent appointed by the Secretary to administer a marketing agreement or a marketing order, and any agent or employee of any such agency or agent;

(l) The term "information" means and includes reports, books, accounts, records, and the facts and information contained therein and required to be furnished to or acquired by any official pursuant to the provisions of any marketing agreement or marketing order.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961, 28 FR 579, Jan. 23, 1963]

§ 900.201 Investigation and disposition of alleged violations.

Whenever the Administrator has reason to believe that any handler has violated, or is violating, the provisions of any marketing order, he may institute such investigation and, after due notice to such handler, conduct such hearing in order to determine the facts as, in his opinion, are warranted. If, in the opinion of the Administrator and the General Counsel, the facts developed as a result of such investigation or hearing warrant such action, the General Counsel shall refer the matter to the Attorney General for appropriate action.

§ 900.210 Disclosures of information.

All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such latter person, or if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpena by an court of competent jurisdiction.

(e) Such information may be offered i evidence (whether or not it has been o tained from or furnished by the perso against whom it is offered) by or on beha of the Secretary, the United States, or th official who obtained it or to whom it wa furnished, in any administrative hearin held pursuant to section 8c (15) (A) of th Act or in any action, suit, or proceedin civil or criminal, in which the Secretary o the United States or any such official is party, and (1) which is instituted (i) for th purpose of enforcing or restraining the vi lation of any marketing agreement or ma keting order, or (ii) for the purpose of co lecting any penalty or forfeiture provide for in the Act, or (iii) for the purpose of co lecting any monies due under a marketin agreement or marketing order, or (2) i which the validity of any marketing agre ment or marketing order, or any provisio of either, is challenged or involved.

(f) Such information may be furnished t the duly constituted authorities of an State, pursuant to a written agreemen made under authority of section 10(i) of th Act, to the extent that such information i relevant to transactions within the regul tory jurisdiction of such authorities.

§ 900.211 Penalties.

Any official who shall have violated th provisions of § 900.210 by wilfully divulgin disclosing, or making public any informa tion acquired by or furnished to or in th possession or custody of such official purs ant to the provisions of a marketing agre ment or marketing order shall be subject t a penalty of $100 for each offense. (The civ penalty provided in this section is pre scribed under the authority contained i sec. 10(c) of the Act (7 U.S.C. 610(c)); thi provision is not intended to supersede th provision in sec. 8d(2) of the Act (7 U.S.C 608d(2)) for criminal liability and remova from office.

Subpart—Procedure for Conduct of Referenda To De termine Producer Approval of Milk Marketi Orders To Be Made Effective Pursuant to Agric tural Marketing Agreement Act of 1937, a Amended

AUTHORITY: Secs. 1-19, 48 Stat. 31, a amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15412, Dec. 15, 1965, unles otherwise noted.

§ 900.300 General.

Unless otherwise prescribed, the proce dure contained in this subpart shall be ap plicable to each producer referendum co ducted for the purpose of ascertainin whether the issuance by the Secretary of milk marketing order is approved or favored, as required under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 7 U.S.C. 601-674). The procedure in this subpart replaces the procedure for conducting similar referenda (15 FR 177) issued August 7, 1950.

§ 900.301 Definitions.

As used in this subpart and in all supplementary instructions, forms, and documents, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

(a) *Act.* "Act" means Public Act. No. 10, 73d Congress (48 Stat. 31), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) *Department.* "Department" means the United States Department of Agriculture.

(c) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator.* "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) *Person.* "Person" includes any individual, partnership, corporation, association, and any other business unit.

(f) *Order.* "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(g) *Producer.* "Producer" means any person who is a dairy farmer and who, during the representative period, met the requirements of the term "producer" as defined in the order had such order been in effect during the representative period.

(h) *Handler.* "Handler" means any person who, during the representative period, met the requirements of the term "handler" as defined in the order had such order been in effect during the representative period.

(i) *Referendum agent.* "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(j) *Representative period.* "Representative period" means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(k) *Cooperative association.* "Cooperative association" means any association of producers that the administrator has found to be qualified pursuant to section 608c(12) of the Act.

[30 FR 15412, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.302 Associations eligible to vote.

(a) Any association of producers, not previously determined to be a cooperative association may file an application for a determination as to whether it is a cooperative association and thus eligible to vote in a referendum. Such application shall be filed with the Administrator at least 60 days prior to the holding of the referendum: *Provided, however,* That the Administrator may permit the filing of an application in less than 60 days when, in the opinion of the Administrator, such filing would not delay the conduct of the referendum.

(b) Within a time fixed by the referendum agent, but not later than 5 days prior to the final date for balloting, each cooperative association electing to vote shall, upon the request of the referendum agent, furnish to him a certified list showing the name and address of each producer for whom it claims the right to vote and the plant at which such person's milk was received during the representative period.

§ 900.303 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 900.304 Who may vote.

(a) Each producer shall be entitled to only one vote and to cast one ballot in each referendum; and no person who may claim to be a producer shall be refused a ballot. Each producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that he is a producer.

(b) Except as provided in section 8c (5)(B) of the Act, as amended, any cooperative association eligible under § 900.302 may, if it elects to do so, vote and cast one ballot for producers who are members of, stockholders in, or under contract with, such cooperative association. A cooperative association shall submit with its ballot, a certified copy of the resolution authorizing the casting of the ballot. Each such cooperative association entitled to vote in a referendum casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent, or in any manner, except by the producer or cooperative association will not be permitted; however, a producer which is other than an individual may cast its ballot by a person who is duly authorized and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer.

§ 900.305 Duties of referendum agent.

The referendum agent shall also:

(a) For purposes of mailing, prepare a record of producers which will disclose the name of each such person, his address, the name of the handler who received the producer's milk during the representative period, and the name of the cooperative association, if any, which claims the right to vote for the producer. Such record may be compiled from readily available sources, including the following:

(1) Records of the Department;

(2) Producer records supplied by handlers;

(3) Health authority records;

(4) Certifications signed by dairy farmers who claim to be producers;

(5) Any other reliable sources of information which may be available to the referendum agent.

(b) Apply, as a guide, the following criteria in preparing a record of producers:

(1) When the order requires approval by an appropriate health authority before a person meets the definition of producer, only those persons having such approval and who otherwise meet the definition may be regarded as producers. When the definition of producer requires the shipment of milk to a handler of a plant as well as health authority approval, only those persons having such approval and whose milk was received by a handler or at a plant may be regarded as producers.

(2) When the order requires shipment to a handler or to a plant, without regard to health authority approval, a person may not be regarded as a producer, except as provided in paragraph (b)(6) of this section unless his name appears on the handler's producer records.

(3) In the case of a producer that is other than an individual, the business unit shall be regarded as the producer.

(4) No person may be included in the record more than once although he may operate more than one farm, hold more than one health authority approval, or appear on more than one handler's producer records.

(5) In the event the health authority records are not available, are inaccurate, or are incomplete, the appearance of the producer's name on a handler's records as an approved producer shall be prima facie evidence of health authority approval.

(6) In the event any handler refuses or fails to make his records available to the referendum agent, a certification signed by the producer shall be regarded by the referendum agent as prima facie evidence that such person is eligible to vote.

(c) Verify the information supplied b each cooperative association which wish to vote on behalf of producers, as follows:

(1) Examine the records of the cooper tive association for the purpose of ascerta ing whether each producer claimed by th cooperative association is a member o stockholder in, or under contract with th cooperative association.

(2) Identify the persons ascertained to b members of, stockholders in, or under co tract with a cooperative association whic wishes to vote on behalf of its produce with the names of producers which appe on the record compiled pursuant to par graph (a) of this section.

(3) In determining whether a cooperati association may vote on behalf of a produ er the following criteria shall be used:

(i) The cooperative association may vo for each producer who is a member o stockholder in, or under contract with suc cooperative association on the date of th order directing that the referendum be co ducted.

(ii) The cooperative association may ca only one ballot for all such producers.

(iii) Whenever more than one cooperati association claims the right to vote for producer only the cooperative associatio which furnished evidence satisfactory to th referendum agent that such association wa in fact marketing the milk of the produce on the date of the referendum order ma vote for such producer.

§ 900.306 Notice of the referendum.

(a) The referendum agent shall at least days prior to the final date for balloting:

(1) Mail to each cooperative associatio which has elected to cast a ballot on beha of its producers and to each of all othe known producers, a notice of the referendum which will include instructions fo completing the ballot, a statement as to th time within which the ballot must be maile to, and received by, the referendum agent, copy of the final decision, and a ballot co taining a description of the terms and cond tions of the order.

(2) Give public notice of the referendum

(i) By furnishing press releases and othe information to available media of public information (including but not limited t press, radio, and television facilities) servin the area, announcing the time within whic ballots must be completed and mailed t and received by the referendum agent, elig bility requirements, where additional infor mation may be procured, and other pertinent information; and

(ii) By such other means as said age may deem advisable.

§ 900.307 Time for voting.

There shall be no voting except within the time specified by the referendum agent as stated in the notice of the referendum.

§ 900.308 Tabulation of ballots.

(a) *General.* The referendum agent shall verify the information supplied with each ballot. If he ascertains that the person who cast the ballot was eligible to do so, that the ballot is complete and was mailed and received within the prescribed time, the ballot shall be eligible to be counted. If the referendum agent ascertains that the person who cast the ballot was not eligible to do so, or if the producer who cast the ballot was a member of, stockholder in, or under contract with a cooperative association which cast a valid ballot, or if the ballot is not completed or cast in accordance with instructions, or if the ballot was not mailed to or received by the referendum agent within the prescribed time, the ballot shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification. The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of eligible ballots cast approving and the number of eligible ballots cast disapproving the issuance of the order shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving the issuance of the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Individual-handler pool provisions.* Whenever separate approval of the pooling provisions of the order is required by section 608c(5)(B)(i) of the act, any ballot which approves the issuance of the order and disapproves the pooling provisions, or approves the pooling provisions and disapproves the issuance of the order, shall be disqualified; and the referendum agent shall mark the ballot accordingly.

(c) *Record of results of the referendum.* The referendum agent shall notify the Administrator of the number of eligible ballots cast, the count of the votes, the number of disqualified ballots and the number of producers who were eligible to cast ballots. The referendum agent shall seal the ballots, including those marked "disqualified", the list of eligible voters and tabulation of ballots, and shall transmit to the Administrator a complete detailed report of all action taken in connection with the referendum together with all the ballots cast and all other information furnished to or compiled by the referendum agent.

(d) *Announcement of the results of the referendum.* Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots cast.

§ 900.309 Confidential information.

The ballots cast, the identify of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 900.310 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 900.311 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Subpart—Procedure for Determining the Qualification of Cooperative Milk Marketing Associations

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 32 FR 9821, July 6, 1967, unless otherwise noted.

§ 900.350 General statement.

Cooperative marketing associations apply for qualification by the Secretary under the Federal milk order program for certain privileges and exemptions. These privileges and exemptions are expressed in the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246) as amended, and the milk marketing orders issued pursuant to its provisions.

§ 900.351 Applications for qualification.

Any association of producers may apply for determinations as to whether it is a qualified cooperative association with authority to represent producers in order referendums; has authorization to collect payment from handlers for members' milk; and is rendering specified marketing services to producers. Applicant associations should supply information for these determinations, using as a guide Application Form DA-25. The application form may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250. Determinations required of the Secretary of Agriculture, or the Administrator of the Agricultural Marketing Service, by delegation are made by the Director of the Dairy Division. Once issued they are valid until amended, suspended or terminated.

§ 900.352 Confidential information.

The documents and other information submitted by an applicant association and otherwise obtained by investigation, examination of books, documents, papers, records, files and facilities, and in reports filed subsequent to initial determinations of qualification, shall be regarded as confidential and shall be governed by § 900.210.

§ 900.353 Qualification standards.

Statutory requirements for qualification of cooperative associations are provided in subsections (5) and (12) of section 608c of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). The association must:

(a) Be a cooperative marketing association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); (b) have its entire organization and all of its activities under the control of its members; (c) have full authority in the sale of its members' milk; and (d) be engaged in making collective sales or marketing of milk or milk products for the producers thereof. Qualification for exemption from deductions for marketing service payments under specific marketing orders and payment for milk of members under specific orders shall be determined in accordance with the terms of the respective marketing orders.

§ 900.354 Inspection and investigation.

The Secretary of Agriculture, or his duly authorized representative, shall have the right, at any time after an application is received, to examine all books, documents, papers, records, files and facilities of the association, to verify any of the information submitted and to procure such other information as may be required to determine whether the association is qualified in accordance with its application.

§ 900.355 Annual reporting.

Determinations of qualification for privileges and exemptions are subject to amendment, termination or suspension if the association does not currently meet the qualification standards. An association found to be qualified pursuant to the Act is required to file an annual report after its annual meeting has been held following the close of its fiscal year. Form DA-24 is used for this purpose. The report form is available at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. The association is required to file a copy of its report with the Dairy Division at Washington and with the market administrator of each order under which it operates.

§ 900.356 Listing of qualified associations.

A copy of each determination of qualification is furnished to the respective association. Copies are also filed in the Dairy Division, Agricultural Marketing Service, and with the Hearing Clerk, Office of the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, where they are available for public inspection. A list of qualified associations engaged in marketing milk under a particular milk marketing order is maintained at the office of the market administrator of the order.

§ 900.357 Denial of application; suspension or revocation of determination of qualification.

Any cooperative association whose application has been wholly or partially denied, or whose determination of qualification has been wholly or partly revoked or suspended, may petition the Secretary for a review of such action. Such petition shall state facts relevant to the matter for which review is sought. After due notice to such cooperative association, the Director of the Dairy Division, or in his absence the Acting Director, shall hold, in the manner hereinafter specified, an informal hearing.

(a) *Notice.* Notice shall be given in writing and shall be mailed to the last known address of the association, or of an officer thereof, at least 3 days before the date set for a hearing. Such notice shall contain: a statement of the time and place of the hearing, said place to be as convenient to the association as can reasonably be arranged, and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented.

(b) *Parties.* Hearings are not to be public and are to be attended only by representatives of the association and of the Government, and such other persons as either the association or the Government desires to have appear for purposes of submitting information or as counsel.

(c) *Conduct of hearing.* The Director or Acting Director of the Dairy Division, or a person designated by him, shall preside at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the association within the time specified by the presiding officer.

(d) *Preliminary report.* The presiding officer shall prepare a preliminary report setting forth a recommendation as to what action shall be taken and the basis for such action. A copy of said report shall be served upon the association by mail or in person. The association may file exceptions to said report within 10 days after service thereof.

(e) *Final report.* After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final report setting forth the action to be taken and the basis for such action.

Subpart—Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15414, Dec. 15, 1965, unless otherwise noted.

§ 900.400 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a marketing order to regulate the handling of any fruit, vegetable, or nut, or product thereof, or the continuance or termination of such an order, is approved or favored by producers or processors shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 900.401 Definitions.

(a) "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended (7 U.S.C. 601-674).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and "Department" means the United States Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(g) "Person" means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term "partnership" includes (1) a husband and wife who have title to, or lease-hold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of the commodity for market and the authority to transfer title to the commodity so produced.

(h) "Producer" means any person defined as a producer in the order who: (1) Owns and farms land, resulting in his ownership of the commodity produced thereon; (2) rents and farms land, resulting in his ownership of all or a portion of the commodity produced thereon; or (3) owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the commodity produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the commodity grown thereon shall not be deemed to result in such owners or lessees becoming producers.

[30 FR 15414, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.402 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that:

(1) In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote in the referendum; and (2) a cooperative association of producers, bona fide engaged in marketing the commodity or product thereof proposed to be regulated, or in rendering services for or advancing the interest of the producers of such commodity, or product, may, if it elects to do so, vote, both by number and total volume, for the producers who are members of, stockholders in, or under contract with such association.

(b) Whenever, as required by the act, processors vote on the issuance of an order, each processor who is engaged in canning or freezing within the production area of the commodity covered by the order shall be entitled to vote in the referendum the quantity of such commodity canned or frozen within the production area for market by him during the representative period determined by the Secretary.

(c) Proxy voting is not authorized but an officer or employee of a corporate producer, processor or cooperative association, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, processor, estate, or cooperative association. Any individual so voting in a referendum shall certify that he is an officer or employee of the producer, processor, or cooperative association, or an administrator, executor, or trustee of a producing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) Each producer, cooperative association of producers, and processor entitled to vote in a referendum shall be entitled to cast one ballot in the referendum. Each producer, cooperative association of producers, and processor casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer, cooperative association of producers, or processor in such referendum.

§ 900.403 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or processors, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and (2) the total volume (i) produced for market during the representative period, or (ii) canned or frozen for market during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers and the aforesaid cooperative associations which indicate to the agent their intentions to vote, and to processors when required, instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and con tions: *Provided*, That no person who clai to be qualified to vote shall be refused ballot.

(f) If ballots are to be cast by mail, cau all the material specified in paragraph (e) this section to be mailed to each produc (and processor when required) whose nam and address is known to the referendu agent.

(g) If ballots are to be cast at pollin places or meetings, determine the necessa number of polling or meeting places, desi nate them, announce the time of each mee ing or the hours during which each pollin place will be open, provide the materi specified in paragraph (e) of this sectio and provide for appropriate custody ballot forms and delivery to the referendu agent of ballots cast.

(h) At the conclusion of the referendu canvass the ballots, tabulate the result and, except as otherwise directed, report th outcome to the Administrator and prompt thereafter submit the following:

(1) All ballots received by the agent an appointees, together with a certificate the effect that the ballots forwarded are a of the ballots cast and received by such pe sons during the referendum period;

(2) A list of all challenged ballots deeme to be invalid; and

(3) A tabulation of the results of the refe endum and a report thereon, including a de tailed statement explaining the metho used in giving publicity to the referendu and showing other information pertinent the manner in which the referendum wa conducted.

§ 900.404 Subagents.

The referendum agent may appoint an person or persons deemed necessary or de sirable to assist said agent in performing hi functions hereunder. Each person so ap pointed may be authorized by said agent t perform, in accordance with the require ments herein set forth, any or all of the fol lowing functions (which, in the absence o such appointment, shall be performed b said agent):

(a) Give public notice of the referendu in the manner specified herein;

(b) Preside at a meeting where ballots ar to be cast or as poll officer at a pollin place;

(c) Distribute ballots and the aforesai texts to producers (and to processors whe required) and receive any ballots which ar cast; and

(d) Record the name and address of eac person receiving a ballot from, or casting ballot with, said subagent and inquire int the eligibility of such person to vote in th referendum.

§ 900.405 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.406 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 900.407 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Public Information

AUTHORITY: 5 U.S.C. 301, 552.

AVAILABILITY OF PROGRAM INFORMATION, STAFF MANUALS AND INSTRUCTIONS, AND RELATED MATERIAL

§ 900.500 General.

This subpart is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A, of Subtitle A of this title (7 CFR 1.1-1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations of this subpart, govern the availability of records of AMS to the public.

[40 FR 20267, May 9, 1975]

§ 900.501 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under § 1.2(a) of this title will be provided by AMS during normal hours of operation. Request for this information should be made to the Freedom of Information Act Officer at the following address:

Freedom of Information Act Officer, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(b) Copies of such material may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director, Office of Operations and Finance, USDA.

[44 FR 39151, July 5, 1979]

§ 900.502 Indexes.

Pursuant to the regulations in § 1.4(b) of this title, AMS will maintain and make available for public inspection and copying current indexes of all material required to be made available in § 1.2(a) of this title. Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

[44 FR 39151, July 5, 1979]

§ 900.503 Requests for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.3(a) of this title. Authority to make determinations regarding initial requests in accordance with § 1.4(c) of this title is delegated to the Freedom of Information Officer of AMS. Requests should be submitted to the FOIA Officer at the following address:

Freedom of Information Act Officer (FOIA Request), Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in § 1.3 of this title.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determination to grant requests or deny initial requests, (2) extend the administrative deadline, (3) make discretionary release of exempt records, and (4) make determinations regarding charges pursuant to the fee schedule.

[44 FR 39151, July 5, 1979]

§ 900.504 Appeals.

Any person whose request under § 900.503 above is denied shall have the right to appeal such denial in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

[40 FR 20267, May 9, 1975]

Subpart—Information Collection

§ 900.600 General.

This subpart shall contain such requirements as pertain to the information collection provisions under the Paperwork Reduction Act of 1980.

[49 FR 23826, June 8, 1984]

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR Parts 904 through 998 under the Paperwork Reduction Act of 1980.

(b) *Display.*

7 CFR part where identified and described	Current OMB control No.
904, California Desert Grapefruit	0581-0101
905, Florida Oranges, Grapefruit, Tangerines, Tangelos	0581-0094
906, Texas Oranges & Grapefruit	0581-0068
907, California-Arizona Navel Oranges	0581-0116
908, California-Arizona Valencia Oranges	0581-0121
910, California-Arizona Lemons	0581-0120
911, Florida Limes	0581-0091
912, Florida Indian River Grapefruit	0581-0088
913, Florida Interior District Grapefruit	0581-0081
915, Florida Avocados	0581-0078
916, California Nectarines	0581-0072
917, California Pears, Plums & Peaches	0581-0080
918, Georgia Fresh Peaches	0581-0135
919, Mesa County, Colorado, Peaches	0581-0
921, Washington Peaches	0581-0
922, Washington Apricots	0581-0
923, Washington Sweet Cherries	0581-0
924, Washington-Oregon Fresh Prunes	0581-0
925, S. E. California Desert Grapes	0581-0
926, California Tokay Grapes	0581-0
927, Oregon-Washington-California Winter Pears	0581-0
928, Hawaiian Papayas	0581-0
929, Cranberries Grown in Designated States	0581-0
930, Red Tart Cherries	0581-0
931, Oregon-Washington Bartlett Pears	0581-0
932, California Olives	0581-0
945, Idaho-Eastern Oregon Potatoes	0581-0
946, Washington Potatoes	0581-0
947, Oregon-California Potatoes	0581-0
948, Colorado Potatoes	0581-0
953, Southeastern Potatoes	0581-0
958, Idaho-Oregon Onions	0581-0
959, South Texas Onions	0581-0
966, Florida Tomatoes	0581-0
967, Florida Celery	0581-0
971, South Texas Lettuce	0581-0
979, South Texas Melons	0581-0
981, California Almonds	0581-0
982, Oregon-Washington Filberts/Hazelnuts	0581-0
984, California Walnuts	0581-0
985, Spearmint Oil	0581-0
987, California Dates	0581-0
989, California Raisins	0581-0
991, Hops	0581-0
993, California Dried Prunes	0581-0
998, Domestic Peanuts	0581-0

[49 FR 23826, June 8, 1984, as amended
53 FR 15659, May 3, 1988]

NOTE

7 CFR Part 1000, the general provisions with respect to milk marketing orders, is set forth for the convenience of users of this volume.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

ec.
000.1 Scope and purpose of Part 1000.
000.2 Definitions.
000.3 Market administrator.
000.4 Continuity and separability of provisions.
000.5 Handler responsibility for records and facilities.
000.6 Termination of obligations.
000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as mended; 7 U.S.C. 601-674.

SOURCE: 36 FR 9845, May 29, 1971, unless therwise noted.

1000.1 Scope and purpose of Part 1000.

This part sets forth certain terms, definiions, and provisions which shall be ommon to and part of each Federal milk arketing order except as specifically deined otherwise, or modified, or otherwise rovided, in an individual order.

1000.2 Definitions.

The following terms shall have the followng meanings as used in the order:

(a) *Act.* "Act" means Public Act No. 10, 3d Congress, as amended and as reenacted nd amended by the Agricultural Marketing greement Act of 1937, as amended (7 .S.C. 601 et seq.).

(b) *Order.* "Order" means the applicable art of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the ct as a Federal milk marketing order (as mended).

(c) *Department.* "Department" means the .S. Department of Agriculture.

(d) *Secretary.* "Secretary" means the Secetary of Agriculture of the United States r any officer or employee of the Department to whom authority has heretofore een delegated, or to whom authority may ereafter be delegated to act in his stead.

(e) *Person.* "Person" means any individal, partnership, corporation, association, or ther business unit.

1000.3 Market administrator.

(a) *Designation.* The agency for the adninistration of the order shall be a market dministrator selected by the Secretary and ubject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the order;

(3) Receive, investigate, and report complaints of violations to the Secretary; and

(4) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his administration, including, but not limited to, the following:

(1) [Reserved]

(2) Employ and fix the compensation of persons necessary to enable him to exercise his powers and perform his duties;

(3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own compensation;

(4) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary surrender the records to his successor or such other person as the Secretary may designate;

(5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;

(6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order;

(iii) Made available records and facilities as required pursuant to § 1000.5;

(7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other per-

sons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect.

(8) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

[36 FR 9845, May 29, 1971, as amended at 45 FR 7777, Feb. 5, 1980]

§ 1000.4 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate and such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly
such liquidating agent. If, upon such li
dation, the funds on hand exceed
amounts required to pay outstanding obli
tions of the office of the market adminis
tor and to pay necessary expenses of li
dation and distribution, such excess shall
distributed to contributing handlers
producers in an equitable manner.

(e) *Separability of provisions.* If any
vision of the order or its application to
person or circumstances is held invalid,
application of such provision and of the
maining provisions of the order to ot
persons or circumstances shall not be affe
ed thereby.

§ 1000.5 Handler responsibility for records facilities.

Each handler shall maintain and ret
records of his operations and make su
records and his facilities available to
market administrator. If adequate reco
of a handler, or of any other persons, th
are relevant to the obligation of such ha
dler are not maintained and made availab
any skim milk and butterfat required to
reported by such handler for which a
quate records are not available shall not
considered accounted for or established
used in a class other than the highest pric
class.

(a) *Records to be maintained.* (1) Ea
handler shall maintain records of his op
ations (including, but not limited to, recor
of purchases, sales, processing, packagin
and disposition) as are necessary to veri
whether such handler has any obligati
under the order, and if so, the amount
such obligation. Such records shall be su
as to establish for each plant or other
ceiving point for each month:

(i) The quantities of skim milk and butte
fat contained in, or represented by, produc
received in any form, including inventori
on hand at the beginning of the month,
cording to form, time, and source of each
ceipt;

(ii) The utilization of all skim milk a
butterfat showing the respective quantiti
of such skim milk and butterfat in ea
form disposed of or on hand at the end
the month; and

(iii) Payments to producers, dairy farme
and cooperative associations, including th
amount and nature of any deductions a
the disbursement of money so deducted.

(2) Each handler shall keep such oth
specific records as the market administrat
deems necessary to verify or establish su
handler's obligation under the order.

(b) *Availability of records and faciliti*
Each handler shall make available
records pertaining to such handler's ope
ations and all facilities the market admini
trator finds are necessary for such mark

administrator to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator fails to notify a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 et seq.) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

§ 1000.7 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0581-0032.

[49 FR 7102, Feb. 27, 1984]

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

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1120.7 Pool plant.
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AUTHORITY: Secs. 1-19, 48 Stat. 31, amended; 7 U.S.C. 601-674.

SOURCE: 39 FR 16019, May 7, 1974, unle otherwise noted.

Subpart—Order Regulating Handlin

GENERAL PROVISIONS

§ 1120.1 General provisions.

The terms, definitions, and provi sions in Part 1000 of this chapter ar hereby incorporated by reference an made a part of this order.

DEFINITIONS

§ 1120.2 Lubbock-Plainview, Tex., marke ing area.

"Lubbock-Plainview, Tex., marketin area", hereinafter called the "market ing area", means all the territor within the boundaries of the countie of:

Bailey, Castro, Cochran, Cottle, Crosby Dickens, Floyd, Gaines, Garza, Hale Hockley, Lamb, Lubbock, Lynn, Motley Terry, Yoakum.

all within the State of Texas, includ ing all territory within such bound aries occupied by Government (munic ipal, State or Federal) reservations, in stallations, institutions, or other simi lar establishments.

§ 1120.3 Route disposition.

"Route disposition" means any deliv ery of a fluid milk product classified a Class I milk from a plant to wholesale or retail outlets (including any dispos tion by a vendor, from a plant store, o through a vending machine) othe than a delivery to a plant.

§ 1120.4 Plant.

"Plant" means the land, building together with their surroundings, fa cilities and equipment, whether owne or operated by one or more persons constituting a single operating unit o establishment at which milk or mil products (including filled milk) are re ceived from dairy farmers or processe or packaged: *Provided,* That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

§ 1120.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of any Grade A fluid milk product during the month in the marketing area.

§ 1120.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable for distribution under a Grade A label is moved during the month to a distributing plant.

§ 1120.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) during the month unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1,500 pounds on a daily average: *Provided,* That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph.

(b) A supply plant from which a volume of fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) is transferred during the month to a distributing plant from which during the month there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants and the volume to disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1,500 pounds, whichever is less: *Provided,* That if a portion of such supply plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further,* That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or a State institution plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this paragraph (e)(2) of this section, it is regulated under such other order; or

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this

marketing area than in such other marketing area but which plant is fully regulated under such other Federal order.

§ 1120.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a state institution plant, nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means any nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant, a state institution plant, nor a producer-handler plant.

(e) "State institution plant" means a State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments. Such plant shall be exempt from all provisions of this part.

§ 1120.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to the milk of any producer which it causes to be diverted for its account pursuant to § 1120.12;

(c) A cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under the control of such association, unless the association notifies t market administrator and the ope tor of the pool plant in writing pr to the time of delivery that the tra feree-handler is to be the responsi handler on such milk;

(d) Any person who operates a p tially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates anoth order plant described in § 1120.7(and

(g) Any person in his capacity as t operator of an unregulated supp plant.

§ 1120.10 Producer-handler.

"Producer-handler" means a person who operates a dairy farm a a distributing plant and whose on source of supply for Class I milk is h own farm production and transfe from pool plants: *Provided*, That suc person furnishes satisfactory proof t the market administrator that th maintenance, care and management all dairy animals and other resourc necessary to produce the enti amount of fluid milk products handle (excluding transfers from pool plant and the operation of the plant a each the personal enterprises of a at the personal risks of such person.

§ 1120.11 [Reserved]

§ 1120.12 Producer.

(a) Except as provided in paragrap (b) of this section, "producer" mea any person who produces milk in com pliance with the Grade A inspectio requirements of a duly constitute health authority, and whose milk is:

(1) Received at a pool plant eith directly or by a handler described i § 1120.9(c); or

(2) Diverted from a pool plant to nonpool plant that is not a produce handler plant for the account either the operator of the pool pla or a cooperative association:

(i) Any day during the months March through June; and

(ii) Not more than 15 days produ tion during any month of Ju through February: *Provided*, Th milk so diverted shall be deemed t have been received at the location the pool plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1120.44(a)(8)(iii) and the corresponding step of § 1120.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1120.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk from producers diverted in accordance with the conditions set forth in § 1120.12; or

(c) Milk received by a handler described in § 1120.9(c): *Provided*, That such milk shall be deemed to have been received by such cooperative association at a pool plant at the location of the pool plant to which it was delivered.

§ 1120.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1120.40(b)(1) from any source other than producers, handlers described in § 1120.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1120.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1120.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1120.40(b)(1)) for which the handler fails to establish a disposition.

§ 1120.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 16019, May 7, 1974, as amended at 40 FR 31945, July 30, 1975]

§ 1120.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1120.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1120.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1120.19 Accounting periods.

A handler may account for receipts, utilization, and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

§ 1120.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1120.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Diary Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Diary Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43400, Aug. 28, 1981]

HANDLER REPORTS

§ 1120.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for each accounting period in the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk for handlers described in § 1120.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1120.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1120.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1120.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1120.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1120.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1120.32 Other reports.

(a) Each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the first day other source milk is received in the form of any fluid milk product at any of his pool plants his intention to receive such product, and on or before the last day such product is received his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the

plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1120.30 and 1120.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1120.40 Classes of utilization.

Except as provided in § 1120.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1120.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section:

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1120.15; and

(6) In shrinkage assigned pursuant to § 1120.41(a) to the receipts specified in § 1120.41(a)(2) and in shrinkage specified in § 1120.41 (b) and (c).

§ 1120.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1120.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1120.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1120.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1120.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1120.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1120.44(a)(7) or the corresponding step of § 1120.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1120.44(a)(11) or (12) or the corresponding steps of § 1120.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1120.40.

(c) *Transfers to producer-handlers and to State institution plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or a State institution plant shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a State institution plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid

milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1120.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, and fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1120.43 General classification rules.

In determining the classification of producer milk pursuant to § 1120.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1120.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1120.40, 1120.41, and 1120.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1120.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1120.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1120.9(a) for each of his pool plants separately and of each handler described in § 1120.9(b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1120.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federa milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds in skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1120.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1120.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a State institution plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1120.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1120.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of

skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1120.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1120.9(c) according to the classification of such products pursuant to § 1120.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1120.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1120.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

§ 1120.50 Class prices.

Subject to the provisions of § 1120.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.49.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1120.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1120.51a.

(c) *Class III price.* The Class
price shall be the basic formula p
for the month.

[39 FR 16019, May 7, 1974, as amended a
FR 6320, Feb. 11, 1975; 45 FR 65514, Oc
1980; 46 FR 43401, Aug. 28, 1981; 51
12833, Apr. 16, 1986]

§ 1120.51 Basic formula price.

The "basic formula price" shall
the average price per hundredweig
for manufacturing grade milk, f.o
plants in Minnesota and Wisconsin,
reported by the Department for t
month, adjusted to a 3.5 percent bu
terfat basis and rounded to the nea
est cent. For such adjustment, the bu
terfat differential (rounded to th
nearest one-tenth cent) per one-tent
percent butterfat shall be 0.12 time
the simple average of the wholesal
selling prices (using the midpoint
any price range as one price) of Grad
A (92-score) bulk butter per pound
Chicago, as reported by the Depar
ment for the month. For the purpo
of computing the Class I price, the r
sulting price shall be not less tha
$4.33.

§ 1120.51a Basic Class II formula price.

The "basic Class II formula price
for the month shall be the basic for
mula price determined pursuant t
§ 1120.51 for the second precedin
month plus or minus the amount com
puted pursuant to paragraphs (a
through (d) of this section:

(a) The gross values per hundred
weight of milk used to manufactur
cheddar cheese and butter-nonfat dr
milk shall be computed, using pric
data determined pursuant to § 1120.2
and yield factors in effect under th
Dairy Price Support Program authorized by the Agricultural Act of 1949, a
amended, for the first 15 days of th
preceding month and, separately, fo
the first 15 days of the second preceding month as follows:

(1) The gross value of milk used t
manufacture cheddar cheese shall b
the sum of the following computations:

(i) Multiply the cheddar cheese pric
by the yield factor used under th
Price Support Program for chedda
cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacturer butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43401, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1120.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located either outside of the State of Texas, or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall, Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I pursuant to paragraph (b) of this section or otherwise classified as Class I milk, the price specified in § 1120.50(a) shall be reduced at the rate set forth in the following table according to the location of the plant where such milk is received:

Miles from Lubbock City Hall	Rate per hundredweight (cents)
100 miles but less than 110 miles	10
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1120.9(c) and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following months, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43401, Aug. 28, 1981]

§ 1120.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price of pricing constituent that is required.

UNIFORM PRICE

§ 1120.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1120.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1120.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1120.44(a)(14) and the corresponding step of § 1120.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1120.70 that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1120.44(a)(9) and the corresponding step of § 1120.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7)(i) through (iv) and the corresponding step of § 1120.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference betwen the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7)(v) and (vi) and the corresponding step of § 1120.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(11) and the corresponding step of § 1120.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1120.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handler included in such computations;

(1) The total hundredweight of producer milk; and

(2) The total hunderedweight for which a value is computed pursuant to § 1120.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price."

(f) The weighted average price shall be the "uniform price" for milk received form producers.

[44 FR 18949, Mar. 30, 1979, as amended at 44 FR 53721, Sept. 17, 1979]

§ 1120.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1120.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1120.71, 1120.76, and 1120.77, subject to the provision of § 1120.78, and from which he shall make all payments pursuant to §§ 1120.72 and 1120.77: *Provided,* That payments due to any handler shall be offset by any payment due from such handler.

§ 1120.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1120.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1120.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1120.60(f).

(b) On or before the 25th day after the end of the month each person who operated another order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition form such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the

Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[39 FR 16019, May 7, 1974, as amended at 44 FR 18949, Mar. 30, 1979]

§ 1120.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1120.71(a)(2) exceeds the amount computed pursuant to § 1120.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments due pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1120.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, to each producer from whom milk is currently being received, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month;

(2) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1120.61 as adjusted pursuant to § 1120.74; and less

(i) Payments made pursuant to paragraph (a)(1) of this section:

(ii) Location adjustments pursuant to § 1120.75;

(iii) Deduction for marketing services pursuant to § 1120.86; and

(iv) Proper deductions authorized by such producer;

Provided, That if by the date specified, such handler has not received full payment for such month pursuant to § 1120.72, he may reduce uniformly per hundredweight for all producer his payments pursuant to this paragraph by an amount not in excess o the per hundredweight reduction i payment from the market administrator, and payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) Each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk on or before the 26th day of the month and the 13th day o the month following, respectively, the amounts otherwise payable pursuant to paragraph (a) of this section, for milk received from producers whom such association certifies are its members: *Provided*, That such cooperative association submits to the handler and to the market administrator before the first day of the month for which i is to receive such payment, a written request for such payment for milk received from such certified member who are producers together with a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of such association. Such request shall be honored with respect to milk received until the first day of the month in which it receives from such association, in writing, notice either of termination o membership, or of withdrawal of the original request. Exceptions, if any, t the accuracy of certification of membership by the cooperative association, by a producer who is claimed to be a member or by a handler shall be made in writing to the market administrator and shall be subject to his determination;

(c) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association as a handler pursuant to § 1120.9(c) as follows:

(1) On or before the 26th day o each month for milk received during the first 15 days for the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the receiving handler's pool plant, less the amounts paid pursuant to paragraph (c)(1) of this section; and

(d) In making payments to producers pursuant to paragraph (a)(2) of this section and to a cooperative association pursuant to paragraph (b) of this section each handler shall furnish each producer from whom he has received milk, or each such cooperative association with respect to each producer member, whichever, is applicable, with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The applicable month;

(2) The identity of the handler, the Federal milk order under which the producer's milk was priced, and the producer;

(3) The daily and total pounds and the average butterfat content of milk received from such producer.

(4) The minimum rate or rates at which payment to the producer is required pursuant to this part;

(5) The rate which is used in making the payment;

(6) The amount or the rate per hundredweight, and the nature of each deduction made by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1120.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1120.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price determined pursuant to § 1120.61 to be paid for milk which is received from producers at pool plants located either outside the State of Texas or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall of Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the table contained in § 1120.52 according to the location of the pool plant at which such milk was received from producers; and

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the weighted average price shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the class III price).

[39 FR 16019, May 7, 1974, as amended at 44 FR 18949, Mar. 30, 1979]

§ 1120.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1120.30(b) and 1120.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant:

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1120.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers sh be allocated to the extent possible those receipts at the partially regul ed distributing plant from pool plan and other order plants that are clas fied in the corresponding class pur ant to paragraph (b)(1)(i) of this se tion. Any such transfers remain after the above allocation which a classified in Class I and for which value is computed for the handler o erating the partially regulated distri uting plant pursuant to § 1120.60 sha be priced at the uniform price (or a the weighted average price if such provided) of the respective order reg lating the handling of milk at th transferee-plant, with such unifor price adjusted to the location of th nonpool plant (but not to be less tha the lowest class price of the respecti order), except that transfers of reco stituted skim milk in filled milk sha be priced at the lowest class price o the respective order; and

(iii) If the operator of the partiall regulated distributing plant so re quests, the value of milk determine pursuant to § 1120.60 for such handle shall include, in lieu of the value o other source milk specified i § 1120.60(f) less the value of suc other source milk specified i § 1120.71(a)(2)(ii), a value of milk de termined pursuant to § 1120.60 fo each nonpool plant that is not a other order plant which serves as supply plant for such partially regu lated distributing plant by makin shipments to the partially regulate distributing plant during the mont equivalent to the requirements o § 1120.7(b) subject to the followin conditions:

(*a*) The operator of the partially reg ulated distributing plant submits wit his reports filed pursuant t §§ 1120.30(b) and 1120.31(b) similar re ports for each such nonpool suppl plant;

(*b*) The operator of such nonpoo supply plant maintains books an records showing the utilization of al skim milk and butterfat received a such plant which are made available i requested by the market administrato for verification purposes; and

(*c*) The value of milk determine pursuant to § 1120.60 for such nonpoo supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1120.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1120.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[39 FR 16019, May 7, 1974, as amended at 44 FR 18949, Mar. 30, 1979]

§ 1120.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or account discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

§ 1120.78 Charges on overdue accounts.

There shall be added to any balance due to the market administrator pursuant to §§ 1120.71, 1120.76, 1120.77, 1120.85, and 1120.86 an amount equal to one-half of 1 percent of such balance for each month or portion thereof that payment of such balance is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1120.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1120.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk specified in paragraphs (a), (b), and (c) of this section: *Provided*, That if a handler elects pursuant to § 1120.19 to use two accounting periods in any month the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1120.9(c);

(b) Other source milk allocated to Class I pursuant to § 1120.44(a)(7) and (11) and the corresponding steps of § 1120.44(b), except such other source milk that is excluded from the computations pursuant to § 1120.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1120.76(a)(2).

§ 1120.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1120.73(a)(2) shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator no later than the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received by handlers from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by or responsible to him.

(b) In the case of a producer for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in said paragraph (a) of this section, such deductions from payments to be made directly to such producers pursuant to § 1120.73(a)(2) as are authorized by such producers and on or before the 15th day after the end of each month pay such deductions to the cooperative association rendering such services.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA [EFFECTIVE FEBRUARY 1, 1989]

Subpart—Order Regulating Handling

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1124.85 Assessment for order administra tion.
1124.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, amended (7 U.S.C. 601-674).

SOURCE: 53 FR 52976, Dec. 30, 1983, unles otherwise noted.

EFFECTIVE DATE NOTE: At 53 FR 52976, Dec. 30, 1988, Part 1124 was revised effectiv February 1, 1989. For the convenience o the user of this volume, Part 1124 remaining in effect until February 1, 1989, follow the text of this new part.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1124.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby referenced and made a part of this order.

DEFINITIONS

§ 1124.2 Pacific Northwest marketing area.

"Pacific Northwest Marketing Area" (hereinafter called the "Marketing Area") means all territory geographically within the places listed below, including all territory fully or partly therein occupied by government (municipal, state or federal) reservations, facilities, installations, or institutions:

Idaho Counties:

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Washington Counties:

Adams, Asotin, Benton, Chelan, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima.

Oregon Counties:

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from a plant store or through a vending machine). The term "route disposition" does not include:

(a) A delivery to a plant. However, packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I under § 1124.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1124.7(a), and the transferor-plant shall be assigned in-area dispositions but not in excess of the in-area dispositions of the transferee plant;

(b) A delivery in bulk to a commercial food processing establishment pursuant to § 1124.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area, of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1124.4 Plant.

"Plant" means the buildings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1124.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1124.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption or filled milk, is transferred during the month to a pool distributing plant.

§ 1124.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted therefrom pursuant to § 1124.13;

(b) A supply plant from which during any month not less than 30 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided*, That:

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which is caused to be delivered directly from their farms to pool distributing plants, shall for the purpose of this paragraph, be considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of September through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the Market Administrator prior to the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(3) For the purpose of this paragraph, the operations of two or more supply plants may be combined and considered as the operation of one plant if so requested in writing to the Market Administrator by the handler(s) operating such plants prior to the first day of the month for which such consideration is requested.

(c) The Director of the Dairy Division may reduce or increase up to 10 percentage points from the levels set forth therein the pool plant performance standards in paragraphs (a) or (b) of this section, if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal Order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal Order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal Order on the basis of

route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal Order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal Order and from which greater shipments are made during the month to plants regulated under such other order than are made to plants regulated under this order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition.

§ 1124.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means plant operated by a producer-hanler as defined in any order (including his part) issued pursuant to the Act.

(c) "Partially regulated distributing lant" means a nonpool plant that is either an other order plant nor a proucer-handler plant, from which uring the month an average of more han 300 pounds daily of fluid milk roducts is disposed of as route dispotion in the marketing area.

(d) "Unregulated supply plant" eans a nonpool plant that is neither other order plant nor a producerandler plant, from which fluid milk roducts are moved to a pool plant ring the month.

(e) "Exempt distributing plant" eans a plant, other than a pool supply plant or a regulated plant under another Federal Order that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1124.3(a).

§ 1124.9 Handler.

"Handler" means:

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association to another plant or pursuant to § 1124.40(b)(3);

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a plant defined in § 1124.8 (a) through (e).

§ 1124.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. Any state institution shall be a producer-handler exempt from the provisions of this section and §§ 1124.30 and 1124.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in its capacity as a handler) complete and exclusive control over the operation and management of a plant at which it handles and processes milk received from its milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in its capacity as a dairy farmer).

(2) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) pool plants within the limitation specified in paragraph (c)(2) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraph (a) (1), (2), and (3) of this section for a period of month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of the producer-handler's milk production resources and facilities; and

(2) As milk handling, processing and distributing resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraph (c) (1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraph (a) (1), (2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed in the aggregate a daily average during the month of 100 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 124.11 Cooperative reserve supply unit.

"Cooperative reserve supply unit" means any cooperative association or its agent that is a handler pursuant to § 1124.9 (b) or (c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order(s) during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use at pool distributing plants are needed for plants defined in § 1124.7(a). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve

cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 15 percent or more butterfat, with or without the addition of other ingredients.

§ 1124.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1124.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1124.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1124.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for t following week shall be the last pr that was established.

(b) *Cheddar cheese price.* "Chedd cheese price" means the simple av age, for the first 15 days of the mont of the daily prices per pound of che dar cheese in 40-pound blocks. T prices used shall be those of the N tional Cheese Exchange (Green B WI), as reported and published wee by the Dairy Division, Agricultu Marketing Service. The average sh be computed by the Director of t Dairy Division, using the price repo ed each week as the daily price f that day and for each following wo day until the next price is reported. work-day is each Monday throu Friday, except national holidays. F any week that the Exchange does n meet to establish a price, the price f the following week shall be the la price that was established.

(c) *Nonfat dry milk price.* "Nonf dry milk price" means the simple av age, for the first 15 days of the mont of the daily prices per pound of nonf dry milk, which average shall be co puted by the Director of the Dairy D vision as follows:

(1) The prices used shall be t prices (using the midpoint of any pri range as one price) of high heat, lo heat and Grade A nonfat dry milk, r spectively, for the Central States pr duction area, as reported and pu lished weekly by the Dairy Divisio Agricultural Marketing Service.

(2) For each week, determine th simple average of the prices report for the three types of nonfat dry mil Such average shall be the daily pri for the day that such prices are r ported and for each preceding wor day until the day such prices were pr viously reported. A work-day is eac Monday through Friday except n tional holidays.

(3) Add the prices determined i paragraph (c)(2) of this section for th first 15 days of the month and divid by the number of days for which the is a daily price.

(d) *Edible whey price.* "Edible whe price" means the simple average, fo the first 15 days of the month, of th daily prices per pound of edible whe powder (nonhygroscopic). The pric used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

HANDLER REPORTS

§ 1124.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1124.9(c);

(iii) Fluid milk products and bulk fluid cream products received from other pool plants showing filled milk separately;

(iv) Other source milk showing filled milk separately; and

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1124.40(b)(1).

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities in route disposition inside and outside the marketing area.

(b) Each producer-handler shall report:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk of own-farm production;

(ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer.

(2) As specified in paragraph (a)(2) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1124.9(b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 1124.9(b); and

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 1124.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraph (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

(f) Each handler who operates an exempt plant or an unregulated supply plant shall report as specified in paragraph (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk.

§ 1124.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of its pool plants and each cooperative association which is a handler pursuant to § 1124.9(b) or (c) shall submit its producer payroll for deliveries (other than own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments; and

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1124.76(a) to be considered in the computation of its obligation pursuant to § 1124.76 shall submit its payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1124.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1124.30 and 1124.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by the handler.

CLASSIFICATION OF MILK

§ 1124.40 Classes of utilization.

Except as provided in § 1124.42 all skim milk and butterfat required to be reported by a handler pursuant to § 1124.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c)
section;

(2) In packaged inventory
milk products at the end
month; and

(3) Not specifically accounted
Class II or Class III milk.

(b) *Class II milk.* Class II mil
be all skim milk and butterfat:

(1) Disposed of in the form of
cream product, eggnog, yogur
any product containing 6 perc
more non-milk fat (or oil) that
bles a fluid cream product, egg
yogurt, except as otherwise pr
in paragraph (c) of this section;

(2) In packaged inventory at t
of the month of the products sp
in paragraph (b)(1) of this sectio

(3) In all bulk fluid milk pr
and bulk fluid cream product
posed of or diverted to any comm
food processing establishment, s
to the conditions of § 1124.42(
which food products (other tha
products and filled milk) are pro
and from which there is no dispo
of fluid milk products or fluid
products other than those recei
consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat c
cheese, and dry curd cottage chee

(ii) Milkshake and ice milk mix
bases) containing 20 percent or
total solids, frozen desserts, and f
dessert mixes;

(iii) Any concentrated milk pr
in bulk fluid form other than
specified in paragraph (c)(1)(iv) o
section.

(iv) Plastic cream, frozen crea
anhydrous milkfat.

(v) Custards, puddings, and pa
mixes;

(vi) Formulas especially prepar
infant feeding or dietary use tha
packaged in hermetically sealed
or all-metal containers; and

(vii) Any milk or milk products
lized and packaged in hermet
sealed metal or glass containers.

(c) *Class III milk.* Class III
shall be all skim milk and butterf

(1) Used to produce:

(i) Cheese (other than co
cheese, lowfat cottage cheese, an
curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1124.15; and

(6) In shrinkage assigned pursuant to § 1125.41(a) to the receipts specified in § 1124.41(a)(2) and in shrinkage specified in § 1124.41 (b) and (c).

§ 1124.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1124.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3) and milk received from a handler described in § 1124.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1124.9(c) and in milk diverted to such plant by the operator of another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant or pursuant to § 1124.40(b)(3), except that if the operator of the plant or establishment to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section.

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1124.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of a plant or a commercial food processing establishment pursuant to § 1124.40(b)(3) to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1124.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers and diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving handler's plant after the computation pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1124.44(a)(8) or the corresponding step of § 1124.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or vertor-handler received during month other source milk to be alloc ed pursuant to § 1124.44(a) (12) or or the corresponding steps § 1124.44(b), the skim milk or butt fat so transferred or diverted up to total of the skim milk and butterf respectively, in such receipts of oth source milk, shall not be classified Class I milk to a greater extent th would be the case if the other sour milk had been received at the transf ee-plant or divertee-plant.

(b) *Transfers and diversions to oth order plants.* Skim milk or butterf transferred or diverted in the form a fluid milk product or a bulk flu cream product from a pool plant to other order plant shall be classified the following manner. Such classific tion shall apply only to the skim mi or butterfat that is in excess of any ceipts at the pool plant from the oth order plant of skim milk and butte fat, respectively, in fluid milk produc and bulk fluid cream products, respe tively, that are in the same category described in paragraph (b) (1), (2), (3) of this section:

(1) If transferred as packaged flu milk products, classification shall be the classes to which allocated as fluid milk product under the oth order;

(2) If transferred in bulk form, cla sification shall be in the classes which allocated under the other ord (including allocation under the cond tions set forth in paragraph (b)(3) this section);

(3) If the operators of both plants request in their reports of receipts a utilization filed with their respecti market administrators, transfers or versions in bulk form shall be clas fied as Class II or Class III milk to t extent of such utilization available f such classification pursuant to the location provisions of the other ord

(4) If information concerning t classes to which such transfers or versions were allocated under t other order is not available to t market administrator for the purpo of establishing classification und this paragraph, classification shall as Class I, subject to adjustmen when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1124.40.

(c) *Transferor and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to the transferee's receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1124.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers and diversions to a commercial food processing establishment.* Skim milk and butterfat transferred or diverted to a commercial food processing establishment shall be classified:

(1) Subject to the provisions of § 1124.13(c) and, except as provided in paragraph (e)(2) of this section, as Class II milk; or

(2) Transfers or diversions shall be classified as Class I milk unless the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification.

§ 1124.43 General classification rules.

In determining the classification of producer milk pursuant to § 1124.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1124.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1124.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1124.40, 1124.41, and 1124.42;

(b) If any of the water contained in the milk which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1124.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1124.40 through 1124.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.060 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1124.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1124.9(a) for each of the handler's pool plants separately and of each handler described in § 1124.9 (b) or (c) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1124.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1124.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1124.40(b) but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1124.40(b)(1) that was not subtracted pursuant to paragraph (a) (5), (6), and (7) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal Order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1124.12(b)(5);

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (8)(v), and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(9)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentages that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant are of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1124.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(4), (6), and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraph (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated, to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (8)(v), (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and

Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragrpahs (a)(13) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportions of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1124.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the hander);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1124.42(a); and

(15) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

§ 1124.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1124.44(a)(13) and the corresponding step of § 1124.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1124.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1124.50 Class prices.

Subject to the provisions of § 1124.52, the class prices for the month, per hundredweight of milk, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraph (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.51 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1124.51 by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under paragraph (c) (1) and (2) of this section subtract 48 cents and round to the nearest cent.

1124.51 Basic formula price.

The "basic formula price" shall be he average price per hundredweight or manufacturing grade milk, f.o.b. lants in Minnesota and Wisconsin, as eported by the Department for the ionth, adjusted to 3.5 percent butterat basis and rounded to the nearest ent. For such adjustment, the butterat differential (rounded to the nearst one-tenth cent) per one-tenth perent butterfat shall be 0.12 times the mple average of the wholesale selling rices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1124.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1124.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined purusant to § 1124.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragrapns (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundreweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1124.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of detemining location adjustments:

(1) Zone 1 shall include:

(i) The Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone;

(ii) The Oregon counties of Benton, Clackamas, Clatsop, Columbia, Douglas, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook Washington, and Yamhill;

(iii) The Washington counties of Clark, Cowlitz, Ferry, Grays Harbor, Island, King, Kitsap, Lewis, Lincoln, Mason, Pacific, Pend Oreille, Pierce, Skagit, Snohomish, Skamania, Spokane, Stevens, Thurston, Wahkiakum, and Whitman.

(2) Zone 2 shall include: the Washington county of Whatcom;

(3) Zone 3 shall include: the Oregon counties of Coos, Jackson, and Josephine;

(4) Zone 4 shall include:

(i) The Idaho counties of Lewis and Nez Perce;

(ii) The Oregon counties of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Morrow, Sherman, Umatilla, Wallowa, Wasco and Wheeler;

(iii) The Washington counties of Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Franklin, Garfield, Grant, Jefferson, Kittitas, Klickitat, Okanogan, San Juan, Walla Walla and Yakima.

(b) For milk received at a plant from producers and which is classified as Class I milk, the price specified in § 1124.50(a) shall be adjused by the amount stated in paragraphs (b) (1) and (2) of this section for the location of such plant:

(1) For a plant located within one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be as follows:

	Adjustment per Hundredweight
Zone 1	No adjustment.
Zone 2	Minus 6 cents.
Zone 3	Minus 8 cents.
Zone 4	Minus 15 cents.

(2) For a plant located outside of one of the zones described in paragraphs (a) (1) through (4) of this section, the adjustment shall be minus 1.5 cents per hundredweight for each 10 miles or fraction thereof by shortest hard-surfaced highway distance that the plant is located from the nearer of the county courthouse in Spokane, Washington, the Multnomah County Courthouse in Portland, Oregon, or the city hall in Eugene, Oregon;

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the price when adjusted for location shall not be less than the Class II price.

(d) For fluid milk products transferred in bulk from a pool plant at another pool plant at which a higher Class I price applies and which is classified as Class I, the price shal be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant determined by the market administrator as follows:

(1) Subtract from the pounds of Class I remaining at the transferee-plant after the computations pursuant to § 1124.44 (a)(13) and (b) the pounds of packaged fluid milk products from other pool plants;

(2) Subtract the pounds of bulk fluid milk products received at the transferee-plant from the following sources:

(i) Producers;

(ii) Handlers described in § 1124.9(c); and

(iii) Pool plants at which the same or a higher Class I price applies.

(3) Assign any pounds remaining to transferor-plants in sequence beginning with the plant at which the least adjustment would apply; and

(4) Multiply the pounds so computed for each transferor-plant by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1124.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the pricing constituent that is required.

UNIFORM PRICE

§ 1124.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants and of each handler described in § 1124.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1124.44(c), by the applicable class prices (adjusted pursuant to § 1124.52) and add together the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1124.44(a)(15) and the corresponding step of § 1124.44(b) by the class prices applicable at the location of the pool plant, as adjusted by the butterfat differential specified in § 1124.74. In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant. In such case, add an amount equal to the value of overage prorated to the quantity transferred to the nonpool plant at the class price applicable at the pool plant;

(c) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1124.44(a)(8) (i) through (iv) and (vii) and the corresponding step of § 1124.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to

§ 1124.44(a)(8) (v) and (vi) and the corresponding step of § 1124.44(b);

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price adjusted pursuant to § 1124.52, or the Class II price as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1124.44(a)(10) and the corresponding step of § 1124.44(b);

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1124.44(a)(12) and the corresponding step of § 1124.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order; and

(g) Add or subtract as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of the handler's receipts and utilization of skim milk and butterfat in previous months for which payment has not been made.

§ 1124.61 Computation of uniform price.

For each month the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month;

(b) Add the aggregate of all minus location adjustments computed pursuant to § 1124.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amoun the sum of the following for all dlers included in these computatio

(1) The total hundredweight of ducer milk; and

(2) The total hundredweight which a value is computed pursuan § 1124.60(f); and

(e) Subtract not less than 4 c nor more than 5 cents per hund weight. The result shall be the " form price" for milk received fr producers.

§ 1124.62 Announcement of uniform p and butterfat differential.

The market administrator shall nounce publicly on or before:

(a) The fifth day after the end each month the butterfat different for such month; and

(b) The 14th day after the end each month the uniform price such month.

PAYMENTS FOR MILK

§ 1124.70 Producer-settlement fund.

The market administrator shall tablish and maintain a separate fu known as the "producer-settleme fund," into which shall be deposit all payments made by handlers purs ant to §§ 1124.71 and 1124.76 and o of which shall be made all paymen to handlers pursuant to § 1124.7 However, the market administrat shall offset the payment due to a ha dler from such fund against paymen due from such handler.

§ 1124.71 Payments to the producer-sett ment fund.

(a) On or before the 16th day aft the end of the month during whic the skim milk and butterfat were r ceived each handler shall pay to th market administrator the amount, any, by which the total amount spe fied in paragraph (a)(1) of this secti exceeds the total amount specified paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of t handler for such month as determin pursuant to § 1124.60; and

(ii) For a cooperative associati handler, the amount due from oth handlers pursuant to § 1124.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform price pursuant to § 1124.73(a)(2) but without adjustments for butterfat;

(ii) The amount to be paid to cooperative associations pursuant to § 1124.73(d) but without adjustment for butterfat; and

(iii) The value at the uniform price for all skim milk and butterfat applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to § 1124.60(f); and

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1124.7(d) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area.

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1124.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(a)(2) exceeds the amount computed pursuant to § 1124.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1124.71(a), 1124.77, 1124.85, and 1124.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for the quantity of milk received, adjusted by the butterfat differential pursuant to § 1124.74 and by any location adjustments applicable under § 1124.75;

(ii) Minus payments made pursuant to paragraph (a)(1) of this section. However, if by such date such handler has not received full payment for such month pursuant to § 1124.72, the handler shall not be deemed to be in violation of this paragraph if the handler reduced uniformly for all producers the payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the Market Administrator; however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1124.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of the producer's milk, and any payment made pursuant to this paragraph shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of such month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class pursuant to § 1124.42(a) by the class price adjusted by the butterfat differential and taking into account any location adjustments as provided by § 1124.52 applicable at the pool plant of the cooperative association or its agent, minus payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler who received milk for which a cooperative association is the handler pursuant to § 1124.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of each month, for the milk received at not less than the uniform price for all milk adjusted pursuant to §§ 1124.74 and 1124.75(b), minus payments made pursuant to para (d)(1) of this section.

(e) None of the provisions of section shall be construed to re any cooperative association qua under section 8c(5)(F) of the Act making payment for milk to its ducers in accordance with such p sion of the Act.

(f) In making payments to prod pursuant to this section, each han on or before the 19th day of month shall furnish each prod with a supporting statement in form that it may be retained by producer, which shall show for preceding month:

(1) The identity of the handler the producer;

(2) The total pounds of milk d ered by the producer and the ave butterfat test thereof and the pou per shipment if such informatio not furnished to the producer day of delivery;

(3) The minimum rate at which ment to the producer is requ under the provisions of this section

(4) The rate per hundredweight amount of any premiums or paym above the minimum price provide the order;

(5) The amount or rate per hund weight of each deduction claimed the handler, together with a desc tion of the respective deductions;

(6) The net amount of paymen the producer.

(g) In making payments to a coo ative association in aggregate pu ant to this section, each handler u request shall furnish to the coop tive association, with respect to e producer for whom such paymen made, any or all of the above infor tion specified in paragraph (f) of section.

§ 1124.74 Butterfat differential.

For milk containing more or than 3.5 percent butterfat, the form price shall be increased or creased, respectively, for each tenth percent butterfat variation f 3.5 percent by a butterfat differen rounded to the nearest one-tenth c which shall be 0.115 times the sin average of the wholesale selling pr (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month.

§ 1124.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment to producers pursuant to § 1124.73(a) subject to the application of § 1124.13(c)(5) appropriate adjustments shall be made per hundredweight of milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1124.52.

(b) In making payments to a cooperative association pursuant to § 1124.73(d) appropriate adjustments shall be made at the rates specified for Class I milk in § 1124.52 for the location of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1124.71(a) and 1124.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1124.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1124.30(d) and 1124.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, the handler shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1124.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or another order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1124.60(f) and a credit in the amount specified in § 1124.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with reports filed pursuant to §§ 1124.30(d) and 1124.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1124.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1124.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Any payments to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the marketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (but not to be less than the Class III price) less the value of such skim milk at the Class III price.

§ 1124.77 Adjustment of accounts.

Whenever verification by the mark administrator of reports or paymen of any handler discloses errors resu ing in money due:

(a) The market administrator fro such handler;

(b) Such handler from the mark administrator; or

(c) Any producer or cooperative ass ciation from such handler, the mark administrator shall promptly noti such handler of any amount so du and payment thereof shall be made o or before the next date for makin payments set forth in the provision under which such error occurred fo lowing the 5th day after such notice.

§ 1124.78 Charges on overdue accounts.

(a) Any unpaid obligation of a han dler pursuant to §§ 1124.71, 1124.7 1124.77, 1124.85 or 1124.86 shall be i creased 1 percent beginning on th first day after the due date, and o each date of subsequent months fo lowing the day on which such type o obligation is normally due, subject t the following conditions:

(1) The amounts payable pursuan to this section shall be compute monthly on each unpaid obligation which shall include any unpaid over due charges previously computed pur suant to this section; and

(2) For the purpose of this section any obligation that was determined a a date later than that prescribed b the order because of a handler's fai ure to submit a report to the mark administrator when due shall be con sidered to have been payable by th date it would have been due if th report had been filed when due.

(b) All charges on overdue account shall be paid to the fund to which th account was due immediately after th charge has been collected.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1124.85 Assessment for order admini tration.

A pro rata share of the expense o administration of the order shall b paid to the market administrator b each handler on or before the 10 day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1124.44(a) (8) and (12) and the corresponding steps of § 1124.44(b), except such other source milk on which no handler obligation applies pursuant to § 1124.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1124.76(b)(2)(ii).

§ 1124.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1124.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this paragraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers. Such services are to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer;

(1) Who is a member of, or who has given written authorization for the rendering of marketing services and the taking of deductions therefore to, a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 1124.73(a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 18th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

EFFECTIVE DATE NOTE: At 53 FR 52978, Dec. 30, 1988, Part 1124 was revised effective February 1, 1989. For the convenience of the user of this volume, the text remaining in effect until February 1, 1989, is set forth below.

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA
[EFFECTIVE FEBRUARY 1, 1989]

Subpart—Order Regulating Handling

GENERAL PROVISIONS AND DEFINITIONS

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1124.87 Expense of administration.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 34 FR 18898, Nov. 27, 1969, unle otherwise noted.

EDITORIAL NOTE: For suspension doc ments affecting this part, see the List CFR Sections Affected appearing in th Finding Aids section of this volume.

Subpart—Order Regulating Handling

GENERAL PROVISIONS AND DEFINITIONS

§ 1124.1 General provisions.

The terms, definitions, and provisions Part 1000 of this chapter are hereby inco porated by reference and made a part this order.

[36 FR 9655, May 29, 1971]

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" mea any person who produces milk in compl ance with the inspection requirements of duly constituted health authority and fro whose farm milk previously has been re ceived at a pool plant, if during the mont milk from the same farm that was produc in compliance with the inspection requir ments of a duly constituted health autho ity is received at a nonpool plant (except a other order plant) as other than a diversio from a pool plant.

[51 FR 7743, Mar. 6, 1986]

§ 1124.5 Cooperative association.

"Cooperative association" means any co operative marketing association of produ ers which the Secretary determines:

(a) To be qualified under the provisions o the Act of Congress of February 18, 1922, a amended, known as the "Capper-Volste Act";

(b) To have full authority in the sale o milk of its members; and

(c) To be engaged in making collectiv sales, or marketing milk or its products fo its members.

§ 1124.6 Oregon-Washington marketing area.

"Oregon-Washington marketing area" hereinafter called the "marketing area" means all territories within the perimetri boundaries of the counties listed below, in cluding all territory as is now occupied an as may be occupied in the future by Govern ment (municipal, State, or Federal) reserva tions, installations, institutions or othe similar establishments. Where such an es tablishment is partly within and partly without the designated boundaries, the mar keting area shall include the entire area en compassed by such establishment.

ORECON COUNTIES

Benton, Clackamas, Clatsop, Columbi Coos, Deschutes, Douglas, Gilliam, Hoo

READEX best copy available

r, Jackson, Jefferson, Josephine, Klam- Lane, Lincoln, Linn, Marion, Morrow, nomah, Polk, Sherman, Tillamook, tilla, Wasco, Washington, Yamhill.

WASHINGTON COUNTIES

nton, Clark, Cowlitz, Franklin, Klicki- Lewis (the town of Vader only), Pacific, nania,[1] Wahkiakum, Walla Walla, ima.

4.7 Handler.

landler" means:

) Any person in his capacity as the oper- of one or more pool plants;

) Any person in his capacity as the oper- of a partially regulated distributing t;

) A cooperative association with respect ilk of its member producers which is di- ed from a pool plant for the account of cooperative association;

) A cooperative association with respect ilk of its member producers which is re- ed from the farm for delivery to the plant of another handler in a tank k owned and operated by or under con- t to such cooperative association;

) A producer-handler; or

) Any person who operates another r plant described in § 1124.61.

FR 23895, Dec. 16, 1971]

24.8 Plants.

) "Distributing plant" means a plant:

) That is approved by a duly constituted lth authority for the processing or pack- g of Grade A milk and which has route osition in the marketing area during the th; or

) That processes or packages filled milk has route disposition of filled milk in marketing area during the month; and

) "Supply plant" means a plant from ch filled milk or a fluid milk product ch has been approved by a duly consti- d health authority for fluid consump- is shipped during the month to a dis- iting plant.

24.9 Pool plant.

'ool plant" means any plant meeting the litions of paragraph (a) or (b) of this ion except the plant of a handler mpt pursuant to § 1124.60 or § 1124.61: vided, That if a portion of a plant is sically separated from the Grade A por- of such plant, is operated separately is not approved by any health authority the receiving, processing, or packaging ny fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section:

(a) A distributing plant which during the month:

(1) Has route disposition (except filled milk) in the marketing area of 15 percent or more of its total receipts of Grade A milk (except packaged fluid milk products from other plants qualified under this paragraph, filled milk, and milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act); and

(2) Has total route disposition, except as filled milk, both inside and outside the marketing area, of 30 percent or more of such receipts: *Provided*, That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the percentage requirements of this paragraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested.

(b) A supply plant from which not less than 40 percent is any month of September through November and not less than 30 percent in any other month, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid products (except filled milk) processed and packaged at such plant; *Provided*, That:

(1) With respect to a supply plant operated by a cooperative association, the producer milk of its members which it caused to be delivered directly from their farm to pool distributing plants shall, for the purpose of this paragraph, be considered as a receipt at the cooperative's supply plant and a shipment from the supply plant to pool distributing plants to the extent that the total quantity of the producer milk received at pool distributing plants directly from such producers' farms does not exceed the total quantity of milk shipped during the same month from the cooperative's supply plant to pool distributing plants;

(2) A plant which qualified as a pool plant pursuant to this paragraph in each month of September through February shall be a pool plant in each of the following months of March through August unless a written application is filed with the market adminis-

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[1] ll territory south of T. 11 N. and Long nd and the North Beach Peninsula only.

trator prior to the first day of any such month requesting that the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(3) For the purpose of this paragraph, the operations of two or more supply plants may be combined and considered as the operation of one plant if so requested in writing to the market administrator by the handler(s) operating such plants prior to the first day of the month for which such consideration is requested.

[36 FR 23895, Dec. 16, 1971, as amended at 37 FR 5224, Mar. 11, 1972; 51 FR 7743, Mar. 6, 1986]

§ 1124.10 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The term includes, but is not limited to the following categories of plants:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this order) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an exempt plant, an other order plant, or a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed in the marketing area on routes during the month.

(d) "Unregulated supply plant" means a nonpool plant which is neither an other order plant nor a producer-handler plant and from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1124.9.

(e) "Exempt plant" means a plant described in § 1124.60.

§ 1124.11 Producer.

"Producer" means any person, except a dairy farmer for other markets or a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk approved by a duly constituted health authority for fluid consumption, which milk is received at a pool plant or diverted therefrom within the limits set forth in paragraphs (a) and (b) of this section and subject to paragraphs (c), (d), (e) and (f) of this section. The term shall not include such person with respect to milk received at a pool plant from another order plant by diversion if both buyer and seller have requested Class III milk classification in the reports of receipts and utilization

filed with the respective market admini
tors:

(a) A cooperative association may d
for its account to a nonpool plant the
of any producer whose milk has been
ceived previously at a pool plant or i
ceived subsequently at a pool plant in
same month. The aggregate quantity d
ed may not exceed 70 percent in the mo
of September, October, November, Ja
and February, and 80 percent in the mo
of December, March and April, of the
ducer milk which the association or
agent causes to be delivered to pool pl
or diverted therefrom. No diversion l
shall apply during the months of
through August. Two or more coopera
associations may have their allowable d
sions computed on the basis of the c
bined deliveries of milk by their mem
producers if each association has filed
a request in writing with the market ad
istrator on or before the first day of
month such agreement is effective. This
quest shall specify the basis for assign
any over-diverted milk to the produ
members of each cooperative association
cording to a method approved by
market administrator.

(b) A handler in its capacity as the ope
tor of a pool plant may divert for his
count to a nonpool plant the milk of
producer whose milk has been received
viously at a pool plant or is subsequently
ceived at a pool plant in the same mo
and who is not a member of a coopera
association which is diverting milk purs
to paragraph (a) of this section during
month. The aggregate quantity diver
may not exceed 70 percent in the months
September, October, November, Janu
and February, and 80 percent in the mo
of December, March and April, of the
ducer milk received at or diverted from
handler's pool plant(s) and for which
operator of such plant(s) is the hand
during the month. No diversion limit s
apply during the months of May thro
August.

(c) In the event milk receipts from d
farmers are diverted in excess of the ap
cable percentages pursuant to paragr
(a) and (b) of this section, the diverting h
dler shall designate the dairy farmers wh
milk was overdiverted and such overdiv
sions shall not be considered producer m
If the handler fails to make such desig
tion, only the milk of the dairy farm
which is physically received at a p
plant(s) by the diverting handler shall
producer milk for such month;

(d) For the purposes of the requirem
of § 1124.9, milk diverted for the account
the operator of a pool distributing pl
except an operator which is also a coop
tive association diverting milk in the

month pursuant to paragraph (a) of this section, shall be included in the receipts of the pool plant from which diverted;

(e) For the purposes of location adjustments pursuant to §§ 1124.52 and 1124.83, any milk diverted shall be considered to have been received at the location of the plant to which diverted; and

(f) Milk moved from producers' farms to a nonpool plant may be diverted producer milk only if it is not fully subject to the pricing and pooling provisions of the other order and if both the diverting handler and the operator of the other order plant request Class III (or Class II) classification.

[36 FR 23895, Dec. 16, 1971, as amended at 50 FR 32692, Aug. 14, 1985; 51 FR 7743, Mar. 6, 1986]

§ 1124.12 Producer-handler.

(a) "Producer-handler" means any person who operates a dairy farm and a milk processing plant from which there is route disposition in the marketing area during the month, and who receives no skim milk (including nonfat dry milk or condensed skim milk or skim milk recombined from nonfat dry milk or condensed skim milk) or butterfat from any source, other than his own production, for use in fluid milk products during the month: *Except* that such person may purchase from other pool plants packaged fluid milk products, other than whole milk, in an amount not in excess of an average of 100 pounds per day during the month; and

(b) Such person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the entire volume of fluid milk products (excluding receipts from pool plants) and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of such person.

§ 1124.13 Producer milk.

"Producer milk" means the skim milk and butterfat handled by a pool plant operator or a cooperative association handler pursuant to § 1124.7(c) and (d) as follows:

(a) Producer milk of a handler operating a pool plant is skim milk and butterfat in milk:

(1) Received at such pool plant directly from producers and cooperative association handlers pursuant to § 1124.7(d), except receipts of diverted producer milk of another pool plant operator or diverted milk from an other order plant if diversion is claimed by the diverting handler and if both handlers have requested Class III classification of such diverted milk in their reports filed pursuant to § 1124.30;

(2) Diverted by the operator of such pool plant for his account to a nonpool plant subject to the limits prescribed in § 1124.11; and

(3) Diverted by the operator of such pool plant or by a cooperative association pursuant to § 1124.7(c) to a pool plant if both the diverting handler and the operator of the plant to which the milk is diverted have requested Class III classification on such diverted milk in their reports filed pursuant to § 1124.30;

(b) Producer milk of a cooperative association pursuant to § 1124.7(c) is skim milk and butterfat in milk received by such cooperative association from producers' farms and diverted for its account to a nonpool plant, subject to the limits prescribed in § 1124.11; and

(c) Producer milk of a cooperative association handler pursuant to § 1124.7(d) is skim milk and butterfat in milk received by such cooperative association from producers' farms in excess of the quantity delivered to pool plants. Such milk shall be priced at the location of the pool plant to which most of the milk in the tank truck was delivered during the month.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 23896, Dec. 16, 1971]

§ 1124.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and cream from any source except:

(1) Producer milk; and

(2) Fluid milk products and cream from pool plants;

(b) Products other than fluid milk products and cream from any source (including those produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product other than a fluid milk product or cream that is in a form in which it may be converted into a Class I or Class II product and which is not otherwise accounted for under the order.

[36 FR 23896, Dec. 16, 1971]

§ 1124.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, plain or flavored milk and milk drinks (unmodified or with added nonfat solids) including "dietary milk products" reconstituted milk or skim milk, filled milk, concentrated milk not in hermetically sealed all metal containers, and mixtures of cream and milk or skim milk containing less than 18 percent butterfat (such as "half and half") including those which are sterilized and aseptically packaged.

§ 1124.16 Route disposition.

"Route disposition" means delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product, other than a delivery to a pool plant or a nonpool plant: *Provided*, That packaged fluid milk products that are transferred to a pool distributing plant from another distributing plant, and which are classified as Class I under § 1124.44(a), shall be considered as a route disposition from the transferor plant, rather than from the transferee plant, for the single purpose of qualifying it as a pool distributing plant under § 1124.9(a) and the transferor plant shall be assigned in-area sales to the extent of such transfer but not in excess of the in-area sales of the transferee.

§ 1124.17 Oregon Base Plan.

"Oregon Base Plan" means the applicable provisions of Oregon Revised Statutes, Chapters 583.510(1) and (2); 583.512; 583.515; 583.516; 583.525(2); 583.530(1)(c), and related provisions of Oregon Administrative Rules, Chapters 603-65-035; 65-040; 65-045; 65-050; 65-055; 65-060; 65-070; 65-075; 65-080; and 65-085.

§ 1124.18 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains not more than 6 percent nonmilk fat (or oil).

§ 1124.19 Base, base milk, and excess milk.

(a) "Base" means a quantity of milk expressed in pounds per day or per month, computed pursuant to § 1124.65(a) and (b) respectively.

(b) "Base milk" means milk delivered by a producer during the month which is not in excess of:

(1) His daily base computed pursuant to § 1124.65(a) multiplied by the number of days in the month except that if milk is received from a producer for only part of a month, base milk shall be milk received from such producer which is not in excess of the amount computed by multiplying his daily base times the number of days in the month less the number of days for which no producer milk is delivered; or

(2) His monthly base computed pursuant to § 1124.65(b).

(c) "Excess milk" means any delivery by a producer in excess of base milk.

[34 FR 18898, Nov. 27, 1969, as amende 48 FR 36441, Aug. 11, 1983]

§ 1124.20 Product prices.

The following product prices shall be u in calculating the basic Class II form price pursuant to § 1124.51a:

(a) *Butter price.* "Butter price" means t simple average, for the first 15 days of t month, of the daily prices per pound Grade A (92-score) butter. The prices u shall be those of the Chicago Mercan Exchange as reported and published wee by the Dairy Division, Agricultural Mark ing Service. The average shall be compu by the Director of the Dairy Division, us the price reported each week as the da price for that day and for each follow work-day until the next price is reported work-day is each Monday through Frid except national holidays. For any week th the Exchange does not meet to establish price, the price for the following week sh be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar chee price" means the simple average, for t first 15 days of the month, of the da prices per pound of cheddar cheese in pound blocks. The prices used shall be tho of the National Cheese Exchange (Gre Bay, WI), as reported and published week by the Dairy Division, Agricultural Mark ing Service. The average shall be comput by the Director of the Dairy Division, us the price reported each week as the da price for that day and for each follow work-day until the next price is reported work-day is each Monday through Frid except national holidays. For any week th the Exchange does not meet to establish price, the price for the following week sh be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat d milk price" means the simple average, f the first 15 days of the month, of the da prices per pound of nonfat dry milk, whi average shall be computed by the Direct of the Dairy Division as follows:

(1) The prices used shall be the pric (using the midpoint of any price range one price) of high heat, low heat and Gra A nonfat dry milk, respectively, for the Ce tral States production area, as reported a published weekly by the Dairy Division, A ricultural Marketing Service.

(2) For each week, determine the simp average of the prices reported for the thr types of nonfat dry milk. Such average sh be the daily price for the day that su prices are reported and for each precedi work-day until the day such prices were p viously reported. A work-day is ea Monday through Friday except nation holidays.

(3) Add the prices determined in par graph (c)(2) of this section for the first

days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previoulsy reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42971, Sept. 30, 1982]

MARKET ADMINISTRATOR

§ 1124.22 Additional duties of the market administrator.

In addition to the duties specified in § 1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a)—(h) [Reserved]

(i) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class I butterfat differential for the current month;

(iii) The Class III price for the preceding month;

(iv) The Class II and Class III butterfat differentials for the preceding month; and

(v) The final Class II price for the preceding month, except that the Class II price announced for the first month during which this paragraph is effective shall be the price specified in the proviso in § 1124.51(b);

(2) The 14th day of each month, the uniform prices and the producer butterfat differential, both for the preceding month; and

(3) The 15th day of each month, the tentative Class II price for the following month;

(j) On or before the 14th day after the end of each month report to each cooperative association which so requests the amount and class utilization of producer milk delivered from members of such association to each proprietary handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler;

(k) [Reserved]

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1124.46(a)(10) and the corresponding step of § 1124.46(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or cream from an other order plant, the classification to which such receipts are allocated pursuant to § 1124.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products or cream to an other order plant the classification to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such classification arising from the verification of such report.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 9855, May 29, 1971; 36 FR 23896, Dec. 16, 1971; 47 FR 42971, Sept. 30, 1982]

REPORTS

§ 1124.30 Reports of receipts and utilization.

On or before the ninth day after the end of each month, the following handlers shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) Each handler who operates a pool plant(s) shall report for each such plant:

(1) The receipts of milk and the pounds of butterfat contained therein including the total quantities of base milk and excess milk;

(i) Received directly from producers;

(ii) Received from a cooperative association handler pursuant to § 1124.7(d);

(iii) Diverted to a nonpool plant within the limits prescribed in § 1124.11; and

(iv) Diverted to a pool plant within the limits prescribed in § 1124.13(a)(3);

(2) The quantities of skim milk and butterfat contained in receipts from other pool plants;

(i) In the form of fluid milk products;

(ii) In the form of Class II milk products; and

(iii) As diverted from another pool plant;

(3) The quantities of skim milk and butterfat contained in receipts of other source milk;

(4) The pounds of skim milk and butterfat contained in all fluid milk products and cream on hand, separately in bulk and in

packages, at the beginning and at the end of the month;

(5) The utilization of all skim milk and butterfat required to be reported pursuant to this section including a statement showing separately the in-area and outside area route disposition of filled milk and other Class I milk;

(6) In the case of diversions to nonpool plants, the following additional information:

(i) The name of the plant to which diverted;

(ii) The name of the individual dairy farmer whose milk was so diverted;

(iii) The pounds of skim milk and butterfat contained in his milk so diverted;

(iv) The number of days his milk was received at a pool plant; and

(7) Such other information with respect to such receipts and utilization as the market administrator may prescribe;

(b) Each cooperative association shall report separately with respect to milk for which it is a handler pursuant to § 1124.7(c) and (d) as follows:

(1) Receipts of skim milk and butterfat from producers;

(2) Utilization of skim milk and butterfat diverted to nonpool plants;

(3) The quantities of skim milk and butterfat delivered to each pool plant of another handler; and

(4) In the case of diversions to nonpool plants, the following additional information:

(i) The name of the plant to which diverted;

(ii) The name of the individual dairy farmer so diverted;

(iii) The pounds of skim milk and butterfat contained in his milk so diverted; and

(iv) The number of days his milk was received at a pool plant; and

(c) Each handler operating a partially regulated distributing plant shall report the information required in paragraph (a) of this section, except that receipts of Grade A milk from dairy farmers shall be reported in lieu of receipts from producers. Such report shall include a separate statement showing the respective amounts of skim milk and butterfat in Class I milk disposed of in the marketing area on routes and the quantity of reconstituted skim milk in such disposition.

[34 FR 18808, Nov. 27, 1969, as amended at 36 FR 23896, Dec. 16, 1971]

§ 1124.31 Payroll reports.

On or before the 9th day of each month, the following handlers shall report to the market administrator, as follows:

(a) Each handler who operates a pool plant(s) shall submit to the market administrator his individual account for milk received from producers at each of his pool plants, including milk diverted as producer milk for his account from such plant du the preceding month which shall show:

(1) The name and the days of delivery each producer from whom milk was rece during the month with the address of producer for whom such information not furnished previously other than who is a member of a cooperative asso tion which is a handler pursuant § 1124.7(d);

(2) The total pounds of milk, the aver butterfat test thereof, and the pounds butterfat received from each producer ported in paragraph (a)(1) of this secti identifying separately those producers which a cooperative association is auth ized to collect payments pursuant § 1124.80(b);

(3) The nature and amount of any ded tions or charges involved in such paymen and

(4) The pounds of base milk and pounds of excess milk for each producer;

(b) Each handler who operates a parti regulated distributing plant and elects make payments pursuant to § 1124.62 shall report as required in paragraph (a) this section, except that receipts of Grade milk from dairy farmers shall be reported lieu of receipts from producers; and

(c) Each cooperative association sh report with respect to milk for which it the handler pursuant to § 1124.7(c) and the name and the number of days of del ery, with the address of any producers previously reported, the total pounds milk and the average butterfat cont thereof which was received from each p ducer.

§ 1124.32 Other reports.

Each producer-handler, each handler erating an exempt plant pursuant § 1124.60 (a) and (b) or an other order pl pursuant to § 1124.61, and each hand making payments pursuant to § 1124.62 shall make reports to the market admin trator at such time and in such manner the market administrator may prescribe.

CLASSIFICATION

§ 1124.33 Reports of payments to producers.

On or before the 25th day after the end the month, each handler paying produc who have not authorized a cooperative as ciation to receive payment for their m and whose milk is not subject to the Ore Base Plan pursuant to § 1124.68, sh report to the market administrator in de and on forms prescribed by the market ministrator as follows for each such prod er:

(a) The producer's name, address and of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

[51 FR 7743, Mar. 6, 1986]

§ 1124.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to § 1124.30 shall be classified by the market administrator pursuant to the provisions of §§ 1124.41 through 1124.46. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all the water originally associated with such solids.

§ 1124.41 Classes of utilization.

Subject to the conditions set forth in §§ 1124.42 through 1124.46, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product except as provided in paragraphs (b)(3) and (c)(3) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not accounted for as Class II milk or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of cream (sweet or sour) sterilized cream, aerated cream, and mixtures of cream and milk or skim milk containing at least 18 percent butterfat;

(2) Used to produce cottage cheese, frozen cream, plastic cream, ice cream, ice cream mix, frozen desserts, frozen dessert mixes, sour cream mixtures to which other ingredients have been added (commonly referred to as "dips"), eggnog, yogurt, aerated cream products and condensed milk or skim milk (either plain or sweetened) utilized for any purpose other than those specified in paragraphs (c)(1) and (4) of this section; and

(3) Disposed of in bulk in the form of fluid milk products or in the form of cream or mixtures of cream and milk or skim milk to a commercial food processing establishment for use in the manufacture of bakery products, candy, meat products, prepared foods in hermetically sealed metal containers, and prepared foods in dried or nonfluid form, all of which products are processed for general distribution to the public for consumption off the premises; and

(4) In packaged cream in inventory at the end of the month; and

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce butter, butteroil, anhydrous butterfat, evaporated milk, condensed milk, or condensed skim milk (either plain or flavored) used to produce another Class III product in a pool plant or in a nonpool plant located within the marketing area, condensed buttermilk, cheese, except cottage cheese, sterilized products in hermetically sealed all-metal containers, nonfat dry milk, dried whole milk, livestock feed and blends of dried milk products;

(2) Contained in products which contain 6 percent or more of nonmilk fat or oil;

(3) In fluid milk products and cream dumped after prior notification to and opportunity for verification by the market administrator;

(4) Represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(5) In inventory of bulk fluid milk products and bulk cream on hand at the end of the month;

(6) In shrinkage at each pool plant allocated pursuant to § 1124.42(b)(1) not to exceed the following:

(i) Two percent of receipts directly from producers and receipts of diverted producer milk from another pool plant if the diversion is accounted for on the basis of farm weights; plus

(ii) One and one-half percent of receipts from a cooperative association in its capacity as a handler pursuant to § 1124.7(d), except that if the handler operating the pool plant files with the market administrator notice that he is receiving such milk on the basis of farm weights (determined from farm bulk tank calibrations and samples), the applicable percentage shall be two percent; plus

(iii) One and one-half percent of receipts of fluid milk products in bulk from other pool plants including diverted milk unless the rate of 2 percent is applicable under paragraph (c)(6)(i) of this section; plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from another order plant, exclusive of the quantity for which Class II or Class III utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class III utilization was requested by the handler; less

(vi) One and one-half percent of disposition in bulk to other milk plants either by transfers or diversions;

(7) In shrinkage allocated pursuant to § 1124.42(b)(2); and

(8) In shrinkage resulting from milk for which a cooperative association is the handler pursuant to § 1124.7(c) or (d) not being delivered to pool plants and nonpool plants, but not in excess of one-half percent of such receipts exclusive of those for which farm weights and tests are used as the basis of receipt at the plant to which delivered.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 23896, Dec. 16, 1971]

§ 1124.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts at each of his pool plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler at each of his plants; and

(b) If the pool plant has receipts of other source milk, shrinkage shall be prorated between;

(1) A quantity equal to 50 times the maximum that may be computed pursuant to § 1124.41(c)(6); and

(2) Skim milk and butterfat in other source milk in the form of fluid milk products exclusive of those specified in § 1124.41(c)(6).

§ 1124.44 Transfers.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk if transferred in the form of a fluid milk product or cream from a pool plant to the pool plant of another handler (or any pool plant if allocations pursuant to § 1124.46 are on an individual plant basis) subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1124.46(a)(10) and the corresponding step of § 1124.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1124.46(a)(5) and the corresponding step of § 1124.46(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I milk utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1124.46(a)(9) or (10) and the corresponding steps of § 1124.46(b), the skim milk and butterfat so transferred shall be classified so as to assign to produ milk the greatest possible Class I utilizati at both plants;

(b) As Class I milk if transferred as a flu milk product in packaged form to a nonpo plant which is not an other order plant;

(c) As Class I milk if transferred or dive ed in bulk in the form of a fluid milk pr uct or cream to a nonpool plant that is n an other order plant, a producer hand plant or an exempt plant unless the requi ments of paragraphs (1) and (2) of th paragraph (c) are met, in which case th skim milk and butterfat so transferred or verted shall be classified in accordance w the assignment resulting from paragra (c)(3) of this section:

(1) The transferring or diverting hand claims classification in Class II or Class in his report submitted pursuant § 1124.30;

(2) The operator of such nonpool pla maintains books and records showing th utilization of all skim milk and butterfat r ceived at such plant which are made av able if requested by the market administ tor for the purpose of verification, and

(3) The skim milk and butterfat so tra ferred or diverted shall be classified on th basis of the following assignment of utili tion from such nonpool plant in excess receipts of packaged fluid milk produ from pool plants and other order plants;

(i) Any Class I milk utilization disposed the marketing area on routes shall be fi assigned to the skim milk and butterfat the fluid milk products so transferred or verted from pool plants, next pro rata to ceipts from dairy farmers who the mar administrator determines constitute regu sources of Grade A milk for such nonpo plant;

(ii) Any Class I milk utilization disposed in the marketing area of another order routes issued pursuant to the Act shall first assigned to receipts from plants fu regulated by such order, next pro rata to ceipts from pool plants and other or plants not regulated by such order, thereafter to receipts from dairy farm who the market administrator determi constitute regular sources of supply such nonpool plant;

(iii) Class I milk utilization in excess that assigned pursuant to paragra (c)(3)(i) and (ii) of this section shall be signed first to remaining receipts from da farmers who the market administrator termines constitute the regular source supply for such nonpool plant and Clas milk utilization in excess of such recei shall be assigned pro rata to unassigned ceipts at such nonpool plant from all p and other order plants;

(iv) To the extent that Class I milk utili tion is not so assigned to it, the skim

nd butterfat so transferred or diverted
hall be classified as Class III milk to the
xtent of such uses at the plant and then as
lass II milk;

(v) To the extent that Class I or Class III
tilization is not assigned to it, the skim
ilk and butterfat in cream so transferred
hall be classified as Class II milk; and

(vi) If any skim milk or butterfat is trans-
rred to a second plant under this para-
raph, the same conditions of audit, classifi-
tion, and allocation shall apply;

(d) As follows, if transferred or diverted in
e form of a fluid milk product or cream to
n other order plant in excess of receipts
om such plant in the same category as de-
ribed in paragraph (d)(1), (2), or (3) of this
ction;

(1) If transferred in packaged form, classi-
cation shall be in the classes to which allo-
ted under the other order;

(2) If transferred or diverted in bulk form,
assification shall be in Class I milk, if allo-
ted as a fluid milk product under the
her order to Class I milk; in Class II milk,
allocated to Class II milk under an order
hich provides three classes; or in Class III
ilk, if allocated to Class III milk under the
her order or if allocated to Class II milk
der an order which provides only two
asses (including allocation under the con-
tions set forth in paragraph (d)(3) of this
ction;

(3) If the operators of both the transferor
d transferee plants so request in the re-
rts of receipts and utilization filed with
eir respective market administrators,
ansfers or diversions in bulk form shall be
assified as Class III milk to the extent of
e Class III milk utilization (or comparable
ilization under such other order) available
r such assignment pursuant to the alloca-
on provisions of the transferee order;

(4) If information concerning the classifi-
tion to which allocated under the other
der is not available to the market adminis-
ator for purposes of establishing classifica-
on pursuant to this paragraph, classifica-
on shall be as Class I milk subject to ad-
stment when such information is avail-
le;

(5) If the form in which any fluid milk
oduct is transferred to any other order
ant is not defined as a fluid milk product
der such other order, classification shall
in accordance with the provisions of
124.41; and

(e) As Class I, if transferred as a fluid milk
oduct to a producer-handler or to an
empt plant under § 1124.60(a) or (b).

6 FR 23896, Dec. 16, 1971]

124.45 Computation of skim milk and butterfat.

For each month the market administrator
all correct for mathematical and other obvious errors reports of receipts and utilization submitted pursuant to § 1124.30 and shall compute the skim milk and butterfat in each class at all pool plants of such handler and the pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1124.7(d) and was not received at a pool plant.

(a) For the purpose of this section, producer milk for which a cooperative association is the responsible handler pursuant to § 1124.7(d) shall be treated separately from the operations of any pool plant(s) operated by such cooperative association for the purpose of allocation pursuant to § 1124.46 and computation of obligation pursuant to § 1124.70; and

(b) If no fluid milk products to be allocated pursuant to § 1124.46(a)(9) or (10) were received at any pool plant of a handler, the total pounds of skim milk and butterfat, respectively, in each class shall be computed for each pool plant of such handler and allocation pursuant to § 1124.46 and computation of obligation pursuant to § 1124.70 shall be made separately for each pool plant of the handler.

[36 FR 23897, Dec. 16, 1971]

§ 1124.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1124.45, the market administrator shall determine each month the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1124.41(c)(6);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid products received in packaged form from other order plants as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(*a*) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(*b*) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

(ii) Receipts of fluid milk products (except filled milk) and cream for which Grade A certification is not established, or which are from unidentified sources;

(iii) Fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal order;

(iv) Receipts of milk from dairy farmers for other markets;

(v) Receipts of fluid milk products from an exempt plant; and

(vi) Receipts of reconstituted skim milk in filled milk from unregulated supply plants;

(6) Subtract, in sequence beginning with Class III milk in the order specified below, from the pounds of skim milk remaining in Class III milk and Class II milk:

(i) The pounds of skim milk in receipts of fluid milk products and cream from unregulated supply plants for which the handler requests Class III utilization, but not in excess of the skim milk remaining in Class III and Class II; and

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to paragraph (a)(5)(vi) of this section, which are in excess of the pounds of skim milk determined as follows:

(*a*) Multiply the pounds of skim milk remaining in Class I milk by 1.25; and

(*b*) Subtract from the result the sum of the pounds of skim milk in producer milk, in receipts from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) and in receipts in bulk from other order plants;

(iii) The pounds of skim milk in rece
of fluid milk products in bulk from anot
order plant in excess of similar transfer
diversions to such plant, but not in exces
the pounds of skim milk remaining in C
III milk (and Class II milk), if Class III ut
zation was requested by the transferee ha
dler and the operator of the transfer
plant requests the lowest class utilizati
under the order;

(7) Subtract from the pounds of skim m
remaining in each class in series beginn
with Class III milk the pounds of skim m
in inventory of bulk fluid milk products a
bulk cream (and for the first month
which a plant becomes a pool plant, t
pounds of fluid milk products and cream
packaged form) on hand at the beginning
the month;

(8) Add to the remaining pounds of sk
milk in Class III milk the pounds subtract
pursuant to paragraph (a)(1) of this sectio

(9) Subtract from the pounds of skim m
remaining in each class, pro rata to the to
pounds of skim milk remaining in ea
class, the pounds of skim milk in receipts
fluid milk products from unregulat
supply plants that were not subtracted pu
suant to paragraph (a)(5)(vi) or (6)(i) or
of this section;

(10) Subtract, beginning with Class
milk, from the pounds of skim milk remai
ing in each class the pounds of skim milk
receipts of fluid milk products in bulk fr
an other order plant, in excess in each ca
of similar transfers to the same plant, th
were not subtracted pursuant to paragra
(a)(6)(iii) of this section pursuant to the f
lowing procedure:

(i) Such subtraction shall be pro rata
whichever of the following represents t
higher proportion of Class III milk a
Class II milk combined;

(*a*) The estimated utilization of skim m
in each class, by all handlers, as announc
for the month pursuant to § 1124.22(1); or

(*b*) The pounds of skim milk remaining
each class at a pool plant(s) of the handl

(11) Subtract from the pounds of sk
milk remaining in each class the pounds
skim milk received from pool plants of oth
handlers (or any pool plant if allocatio
on an individual plant basis) by transfer
diversion according to the classification
signed pursuant to § 1124.44(a); and

(12) If the remaining pounds of skim m
in all classes exceed the pounds of skim m
contained in milk received from produce
and from cooperative associations pursu
to § 1124.7(d), subtract such excess from t
remaining pounds of skim milk in series b
ginning with Class III milk. Any amount
subtracted shall be known as overage:

(b) Butterfat shall be allocated in acco
ance with the procedure outlined for sk
milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

[36 FR 23897, Dec. 16, 1971, as amended at 51 FR 7744, Mar. 6, 1986]

MINIMUM PRICES

§ 1124.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

[37 FR 2941, Feb. 10, 1972]

§ 1124.51 Class prices.

Subject to the provisions of §§ 1124.52 and 1124.53, the class prices per hundredweight for the month shall be computed as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.95.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraph (c)(1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the Class III price for the month plus 25 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1124.50 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1124.51a.

(c) *Class III milk.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk creamery butter at Chicago as reported by the Department for the month;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month; and

(3) From the sum of the results arrived at under paragraphs (c)(1) and (2) of this section, subtract 48 cents, and round to the nearest cent.

[34 FR 18898, Nov. 27, 1969, as amended at 40 FR 6320, Feb. 11, 1975; 47 FR 42972, Sept. 30, 1982; 51 FR 12833, Apr. 16, 1986]

§ 1124.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1124.50 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross value per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1124.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month, and separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c)(1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42972, Sept. 30, 1982]

§ 1124.52 Location adjustment to handlers.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant 100 miles or more from the nearer of the Multnomah County Court House in Portland, Oreg., or the city hall in Eugene, Oreg., by the shortest hard-surfaced highway distance as determined by the market administrator, shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 1 miles: *Provided*, That the location adjustment applicable at a plant located 100 miles or more from the nearer of such basing points but within the Oregon counties of Clatsop, Coos, Douglas, Jackson, Josephine, Lane, Lincoln, and Tillamook shall be no more than 10 cents and the location adjustment applicable at a plant located elsewhere in the marketing area or in Grant County, Wash., shall not be more than 20 cents; a

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of receipts of milk from producers and handlers pursuant to § 1124.7(d) at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with the plant with the lowest applicable location adjustment.

[36 FR 23898, Dec. 16, 1971, as amended 41 FR 41079, Sept. 21, 1976]

§ 1124.53 Butterfat differentials to handlers.

For milk containing more or less than 3 percent butterfat, the class prices pursuant to § 1124.51 shall be increased or decreased, respectively, for each one-tenth of 1 percent of butterfat by the appropriate rate, rounded in each case to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply by 0.12 the butter price described in paragraph (c)(1) of § 1124.51 for the preceding month;

(b) *Class II milk.* Multiply by 0.115 the butter price described in paragraph (c)(1) of § 1124.51; and

(c) *Class III milk.* Multiply by 0.115 the butter price described in paragraph (c)(1) of § 1124.51.

§ 1124.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or from other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price required.

APPLICATION OF PROVISIONS

§ 1124.60 Exemptions.

Sections 1124.40 through 1124.46, 1124 through 1124.54, 1124.70 through 1124 and 1124.80 through 1124.87 shall not apply to a producer-handler or an exempt plant bed in paragraph (a) or (b) of this sec-

A distributing plant operated by a
nment agency; and

Any distributing plant from which less
an average of 300 pounds of Class I
per day is disposed of in the marketing
n routes during the month.

61 Other order plants.

provisions of this order shall not
with respect to the operation of any
specified in paragraph (a), (b), or (c)
is section except that the operator
with respect to total receipts of skim
and butterfat at such plant, make re-
to the market administrator at such
and in such manner as the market ad-
trator may request and allow verifica-
f such reports by the market adminis-
:

A plant meeting the requirements of
.9(a) which also meets the pool plant
rements of another Federal order and
which, the Secretary determines, a
er quantity of Class I milk, except
milk, was disposed of during the
h in such other Federal order market-
rea on routes than was disposed of in
narketing area on routes, except that if
plant was subject to all the provisions
is order in the immediately preceding
h, it shall continue to be subject to all
rovisions of this order until the third
cutive month in which a greater pro-
on of its Class I milk disposition on
s is made in such other marketing area
s, notwithstanding the provisions of
paragraph, it is regulated under such
order;

A plant meeting the requirements of
.9(a) which also meets the pool plant
rements of another Federal order on
asis of route distribution in such other
ting area, and from which the Secre-
letermines a greater quantity of Class
k, except filled milk, is disposed of
the month in this marketing area on
than is so disposed of in such other
ting area, but which plant maintains
g status for the month under such
Federal order; and

A plant meeting the requirements of
.9(b) which also meets the pool plant
rements of another Federal order and
which greater shipments, except filled
are made during the month to plants
ted under such other order than are
to plants regulated under this order.

62 Obligations of handler operating a par-lly regulated distributing plant.

handler who operates a partially
ted distributing plant shall pay to the
t administrator for the producer-set-
t fund on or before the 25th day
the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1124.30 and 1124.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1124.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III (or Class II) milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk should be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1124.70(e) and a credit in the amount specified in § 1124.81(c) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section;

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1124.30 and 1124.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1124.8(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant;

(2) From this obligation there will be deducted the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section; and

(ii) Any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant;

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing areas;

(2) Deduct the respective amounts of skim milk and butterfat received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(4) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant (not to be less than the Class III price), subtract its value at the uniform price applicable at such location (not to be less than the Class III price) and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the location of the nonpool plant (not to be less than the Class III price) less the value of such skim milk at the Class III price.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 23898, Dec. 16, 1971; 41 FR 41079, Sept. 21, 1976]

DETERMINATION OF BASE

§ 1124.65 Computation of producer bases.

Subject to the rules set forth in § 1124.66, the market administrator shall determine bases for producers in the manner provided in paragraphs (a) and (b) of this section:

(a) The daily base of each producer whose milk was received at a pool plant(s) or diverted as producer milk from a pool plant during the four months in each January-December period in which the average daily receipts of total producer milk are lowest shall be an amount computed by dividing such producer's total pounds of milk delivered in such base-earning period by the number of days in such period: *Provided,* that a producer who delivers producer milk for only part of such period, but not less than 90 days, shall have a daily base computed by dividing such producer's total deliveries of producer milk by the number of days in the four-month period less
number of days for which no producer
is delivered. The base so computed shal
recomputed each year, shall become ef
tive on the first day of February next
lowing, and shall remain in effect thro
January of the next succeeding year:

(1) Any dairy farmer for whom infor
tion concerning deliveries during the b
earning period is available to the market
ministrator and who becomes a produce
a result of the plant to which his milk
delivered during the base-earning per
subsequently being qualified as a pool pl
a daily base shall be computed pursuant
this paragraph; and

(2) A dairy farmer who qualified as a p
ducer-handler pursuant to § 1124.12 for
less than 90 days during the period specif
in paragraph (a) of this section shall up
becoming a producer have a base compu
as if he had been a producer during
period.

(b) Any producer who is not eligible to
ceive a base computed pursuant to pa
graph (a) of this section, shall have
monthly base computed by multiplying
deliveries to a pool plant(s) during
month by the appropriate monthly perce
age in the following table:

January
February
March
April
May
June
July
August
September
October
November
December

[36 FR 23898, Dec. 16, 1971, as amended
48 FR 36441, Aug. 11, 1983]

§ 1124.66 Base rules.

The following rules shall be observed
the determination of bases:

(a) A base may be transferred upon
ten notice to the market administrator
or before the last day of the month of tra
fer, but under the following circumstan
only: If a producer who earned a base p
suant to § 1124.65(a) sells, leases, or oth
wise conveys his herd to another produc
the latter may receive the transferor's ba
pursuant to the conveyance, and uti
such base for the remainder of the per
for which such base is effective pursuant
§ 1124.65(a), subject to the following con
tions:

(1) Such base shall apply to deliveries
milk by the transferee producer from
same herd only;

(2) If such conveyance takes place after August 1 in 1971 (and after Jan. 1 in subsequent years), all milk delivered to pool plant(s) between August 1 in 1971 (and Jan. 1 in subsequent years) and the last day of the base-earning period specified in § 1124.65(a), inclusive, from the same herd (whether by the transferor or transferee producer) shall be utilized in computing the base of the transferee producer pursuant to § 1124.65(a);

(3) It is established to the satisfaction of the market administrator that the conveyance of the herd was bona fide and not for the purpose of evading any provision of this order; and

(4) Notwithstanding paragraphs (a)(1) and (2) of this section, but in compliance with paragraph (a)(3) of this section:

(i) A base, whether earned pursuant to § 1124.65(a) or received by transfer, may be transferred to a member of a baseholder's immediate family; and

(ii) In the case of a baseholder's death, a base earned pursuant to § 1124.65(a) by the baseholder or by a member of his immediate family may be further transferred to an outside party: *Provided*, That for purposes of this paragraph a transfer to an estate shall not be considered as a transfer to an outside party;

(b) A producer who ceases deliveries to a pool plant for more than 45 days shall lose his base if computed pursuant to § 1124.65(a) and if he resumes deliveries to such a plant he shall be paid on a base determined pursuant to § 1124.65(b) until he can establish a new base in the manner provided in § 1124.65(a);

(c) By notifying the market administrator in writing on or before the 15th day of any month, a producer holding a base established pursuant to § 1124.65(a) may relinquish such base by cancellation. Such producer's base shall be computed in the manner provided by § 1124.65(b) and shall be effective from the first day of the month in which notice is received by the market administrator until the close of the period, pursuant to § 1124.65(a), for which such base was computed;

(d) On or before February 15 of each year notice of the amount of each producer's base shall be given by the market administrator to the producer, to the handler receiving such producer's milk and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place at each of his plants a list or lists showing the base of each producer whose milk is received at such plant;

(e) If a producer operates more than one farm he shall establish a separate base with respect to producer milk delivered from each such farm; and

(f) Only producers as defined in § 1124.11 may establish or earn a base pursuant to the provisions of § 1124.65, and only one base shall be allotted with respect to milk produced by one or more persons where the land, buildings, and equipment used are jointly owned or operated.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 23899, Dec. 16, 1971]

§ 1124.68 Payments to producers under the Oregon Base Plan.

Notification shall be given by the market administrator to producers and cooperative associations of intent to make payment of producer returns attributable to producers who participate in the Oregon Base Plan in accordance with § 1124.82(c)(2). Producers who participate in the Oregon Base Plan shall be identified as follows:

(a) Any producer whose farm is located in Oregon and whose milk is received at a plant located in Oregon unless such producer notifies the market administrator in writing before the first day of any month for which he first elects to receive payment at the applicable uniform price(s);

(b) Any producer member of any cooperative association licensed or operating in Oregon unless such cooperative association notifies the market administrator in writing before the first day of any month for which it first elects to receive payment for its members' milk at the applicable uniform price(s); and

(c) Any producer whose farm is located outside Oregon but whose milk is received at a plant located in Oregon, or whose milk is sold through an Oregon licensed handler, and whose voluntary participation in the Oregon Base Plan is evidenced by a written agreement between such producer and such handler, unless such producer notifies the Market Administrator before the first day of any month for which he first elects to receive payment at the applicable uniform price(s).

DETERMINATION OF UNIFORM PRICES

§ 1124.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each handler pursuant to § 1124.7(a), (c), and (d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1124.46(c), by the applicable class prices (adjusted pursuant to §§ 1124.52 and 1124.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1124.46(a)(11) and the corresponding step of § 1124.46(b), by the applicable class prices;

(c) Add the amount obtained from multiplying the Class III price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(7) and the corresponding step of § 1124.46(b) for the current month.

(d) Add the amount obtained by multiplying the difference between the Class I price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(4) and the corresponding step of § 1124.46(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount;

(e) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(5) and the corresponding step of § 1124.46(b), except that for receipts of fluid milk products assigned to Class I pursuant to § 1124.56(a)(5)(vi) and the corresponding step of § 1124.46(b) the Class I price shall be adjusted to the location of the transferor plant (but the adjusted price not to be less than the Class III price); and

(f) Add the value at the Class I price, adjusted for the location of the nearest nonpool plant(s) from which an equivalent volume was received (but the adjusted price not to be less than the Class III price) of the skim milk and butterfat subtracted from Class I pursuant to § 1124.46(a)(9) and the corresponding step of § 1124.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk and butterfat disposed of to such plant by handlers under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 23899, Dec. 16, 1971]

§ 1124.71 Computation of uniform and weighted average prices.

For each month the market administrator shall compute the uniform and weighted average prices per hundredweight of milk as follows:

(a)(1) Combine into one total the values computed pursuant to § 1124.70 for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.81 for the preceding month;

(2) Add an amount equal to the
value of the location differentials comp
pursuant to § 1124.83;

(3) Subtract, if the average butterfat
tent of the milk specified in paragr
(a)(1) of this section is more than 3.5
cent, or add, if such butterfat content is
than 3.5 percent, an amount computed
multiplying the amount by which the a
age butterfat content of such milk va
from 3.5 percent by the butterfat differ
tial computed pursuant to § 1124.84
multiplying the result by the total hundr
weight of such milk;

(4) Add an amount equal to not less th
one-half of the unobligated balance in
producer-settlement fund;

(5) Divide the resulting amount by
sum of the following for all handlers inc
ed in these computations:

(i) The total hundredweight of produ
milk; and

(ii) The total hundredweight for which
value is computed pursuant to § 1124.70
and

(6) Subtract not less than 4 cents
more than 5 cents. The result shall be
"weighted average price." For all mon
prior to February 1970, the result shall
be the "uniform price" per hundredweig
of producer milk of 3.5 percent butter
content delivered to plants at which no lo
tion differential is applicable; and

(b) For February 1970 and all subseque
months the market administrator shall c
pute "uniform prices" for base and ex
milk as follows:

(1) From the net amount computed pur
ant to paragraphs (a)(1) through (4) of t
section, subtract the following:

(i) The amount computed by multiply
the hundredweight of milk specified
paragraph (a)(5)(ii) of this section by
weighted average price; and

(ii) The total value of the excess m
computed by assigning such milk in se
beginning with Class III to the hundr
weight of producer milk in each class, m
plying the quantities of milk so assigned
each class by the respective class prices
milk containing 3.5 percent butterfat c
tent and adding together the result
amounts;

(2) Divide the net amount obtained
paragraph (a)(1) of this section by the t
hundredweight of base milk and subtr
not less than 4 cents nor more than 5 ce
This result shall be known as the unif
price per hundredweight of base milk of
percent butterfat content; and

(3) Divide the amount obtained in pa
graph (a)(1)(ii) of this section by the t
hundredweight of excess milk and subtr
any fractional part of 1 cent. This re
shall be known as the uniform price

hundredweight of excess milk of 3.5 percent butterfat content.

PAYMENTS FOR MILK

§ 1124.80 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1124.62 and 1124.81 and out of which he shall make all payments from such fund pursuant to § 1124.82: *Provided*, That the market administrator shall offset the payment due to a person from such fund against payments due from such person.

[36 FR 23899, Dec. 16, 1971]

§ 1124.81 Payments to the producer-settlement fund.

On or before the 16th day after the end of each month, each handler shall pay to the market administrator his net pool obligation computed pursuant to § 1124.70, less:

(a) Payments made pursuant to § 1124.82a;

(b) The amount of the deductions and payments authorized by individual producers or cooperative associations which are itemized on the handler's producer payroll; and

(c)(1) The value at the weighted average price computed pursuant to § 1124.71(a) applicable at the location of the plant(s) from which received (not to be less than the Class III price) with respect to other source milk for which values are computed pursuant to § 1124.70(e); and

(2) In the calculation of the total amount of the deductions and charges to be subtracted, the deductions and charges to be considered with respect to each individual producer shall not be greater than the total value of the milk received from such producer.

[41 FR 41079, Sept. 21, 1976]

§ 1124.82 Payments from the producer-settlement fund.

(a) The market administrator shall compute the payment due each producer for milk received during the month from such producer by a handler(s) who made the payments for such month pursuant to § 1124.81 by multiplying the hundredweight of such milk by the appropriate uniform price(s) computed pursuant to § 1124.71(a) or (b), whichever is applicable, adjusted by the location differential pursuant to § 1124.83 and the butterfat differential pursuant to § 1124.84, and less any charges or deductions made pursuant to § 1124.81(a) and (b);

(b) On or before the 20th day after the end of each month the market administrator shall pay direct to each producer who has not authorized a cooperative association to receive payment for such producer or for milk not subject to the Oregon Base Plan pursuant to § 1124.68, the amount of the payment calculated for such producer pursuant to paragraph (a) of this section subject to the provisions of § 1124.86; and

(c) On or before the 18th day after the end of each month, the market administrator, subject to the provisions of § 1124.86, shall pay:

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

[34 FR 18898, Nov. 27, 1969, as amended at 41 FR 41079, Sept. 21, 1976; 51 FR 7744, Mar. 6, 1986]

§ 1124.82a Partial payments to producers and to cooperative associations.

(a) On or before the last day of each month, each handler shall make payment, subject to paragraph (b) of this section, to each producer, who had not discontinued shipping milk to such handler before the 15th day of the month, for milk received from such producer during the first 15 days of the month, at not less than the Class III price per hundredweight for the preceding month;

(b) In making payments to producers pursuant to paragraph (a) of this section, each handler, on or before the second day prior to the date specified in such paragraph, shall pay to each cooperative association that so requests for those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section; and

(c) On or before the second day prior to the last day of the month, each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler described in § 1124.7(c) and (d) for milk received during the first 15 days of the month at not less than the Class III price per hundredweight for the preceding month.

[41 FR 41079, Sept. 21, 1976]

§ 1124.83 Location differentials to producers and on nonpool milk.

(a) In making payments pursuant to § 1124.82 the market administrator shall reduce the uniform price computed pursuant to § 1124.71(a) and the uniform price for base milk computed pursuant to § 1124.71(b)(2) by the location differential applicable at the plant where such milk was first physically received from producers, and the uniform prices of producer milk diverted to a nonpool plant according to the location of the nonpool plant, each at the rates set forth in § 1124.52; and

(b) For the purpose of computation pursuant to § 1124.81(c) the prices shall be adjusted at the rates set forth in § 1124.52 applicable at the location of the nonpool plant from which the milk was received.

[34 FR 18898, Nov. 27, 1969, as amended at 41 FR 41079, Sept. 21, 1976]

§ 1124.84 Butterfat differential to producers.

In making payments pursuant to § 1124.82 the applicable prices shall be increased or decreased for each one-tenth of 1 percent that the butterfat content of the producer's milk is above or below 3.5 percent, respectively at the rate determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1124.46 by the butterfat differential for such class, dividing the sum of such values by the pounds of such butterfat and rounding the resultant figure to the nearest one-tenth cent.

§ 1124.85 Adjustment of accounts.

(a) Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in moneys due a producer, a cooperative association or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred; and

(b) Any unpaid obligation of a handler pursuant to §§ 1124.81, 1124.86, and 1124.87, or paragraph (a) of this section, including any obligation incurred under this paragraph, shall be increased three-fourths of 1 percent on the next day following the due date of such obligation and at a similar rate on the first day of each month thereafter until paid.

[34 FR 18898, Nov. 27, 1969, as amended at 41 FR 41079, Sept. 21, 1976]

§ 1124.86 Marketing services.

(a) In making payments to producers pursuant to § 1124.82, the market administrator shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, with respect to the milk of producers (except the own production of a handler) for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; and

(b) The monies retained by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator for market information and for the verification of weights, samples and tests of milk of producers for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

§ 1124.87 Expense of administration.

As his pro rata share of the expense of administration of the order each handler shall pay to the market administrator on or before the 16th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk including a handler's own production;

(b) Other source milk allocated to Class I milk pursuant to § 1124.46(a)(5) and (9) and the corresponding steps of § 1124.46(b); and

(c) Class I milk disposed of from a partially regulated distributing plant in the marketing area on routes that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

[34 FR 18898, Nov. 27, 1969, as amended at 36 FR 23899, Dec. 16, 1971]

EFFECTIVE DATE NOTE: At 53 FR 52976, Dec. 30, 1988, Part 1125 was removed effective February 1, 1989. For the convenience of the user of this volume, the text remaining in effect until February 1, 1989, is set forth below.

PART 1125—MILK IN THE PUGET SOUND-INLAND MARKETING AREA

Subpart—Order Regulating Handling

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1125.85 Assessment for order administration.
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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended: 7 U.S.C. 601-674.

SOURCE: 48 FR 52870, Nov. 23, 1983, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1125.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1125.2 Puget Sound-Inland marketing area.

"Puget Sound-Inland marketing area" (hereinafter called the "marketing area") means all territory geographically within the places listed below, including all territory wholly or partly therein occupied by government (Municipal, State or Federal) reservations, facilities, installations, or institutions:

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, Shoshone.

Washington Counties

Adams, Chelan, Douglas, Ferry, Grant, Grays Harbor, Island, King, Kittitas, Lewis (except the town of Vader), Lincoln, Okanogan, that portion of Pacific county north of township 11N (except Long Island and

North Beach Peninsula), Pend Orielle, Pierce (except Fox, McNeil, and Anderson Islands and the peninsulas adjacent to Kitsap County), San Juan, Skagit, Snohomish, Spokane, Stevens, Thurston, Whatcom, and Whitman.

§ 1125.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point as provided by this section, by a vendor, from a plant store or through a vending machine). The term "route disposition" does not include:

(a) *A delivery to a plant.* However, packaged fluid milk products that are transferred to a pool distributing plant from another pool distributing plant, and classified as Class I under § 1125.42(a), shall be considered route disposition from the transferor-plant for the sole purpose of qualifying it as a pool distributing plant under § 1125.7(a), and the transferor-plant shall be assigned in-area dispositions but not in excess of the in-area dispositions of the transferee plant;

(b) A delivery in bulk to a commercial food processing establishment pursuant to § 1125.40(b)(3); or

(c) A delivery to a military or other ocean transport vessel leaving the marketing area, of fluid milk products which originated at a plant located outside the marketing area and were not received or processed at any pool plant.

§ 1125.4 Plant.

"Plant" means the building, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment, which is maintained and operated primarily for the receiving, handling and/or processing of milk or milk products (including filled milk). Separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition or separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a "plant" under this definition.

§ 1125.5 Distributing plant.

"Distributing plant" means a plant in which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is processed or packaged and that has route disposition in the marketing area during the month.

§ 1125.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product approved by a duly constituted regulatory agency for fluid consumption, or filled milk, is transferred during the month to a pool distributing plant.

§ 1125.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of receipts of Grade A milk at such plant (exclusive of transfers of packaged fluid milk products from plants qualifying as pool plants pursuant to this paragraph) or diverted therefrom pursuant to § 1125.13.

(b) A supply plant from which there is transferred to a pool distributing plant fluid milk products that represent not less than the following percentages of the total quantity of Grade A milk that is physically received at such plant directly from dairy farmers, or a cooperative association pursuant to § 1125.9(c) or diverted therefrom as producer milk pursuant to § 1125.13:

Months and Applicable Percentage

January, February, or September–40
March through August–30
October through December–50

Any such plant that has transferred the applicable percentage of its receipts during the entire September through February period shall be a pool plant for the months of March through August immediately following. Any plant which otherwise meets the requirement of this paragraph may withdraw from pool supply plant status in the March through August period if the operator of the plant files with the market administrator prior to the first day of such month a written request for such withdrawal. The plant may regain pool status during such period only by meeting the applicable qualifying percentage.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month it shall continue to be subject to all the provisions of this part until the fourth consecutive month in which a greater proportion of its route disposition is made in

such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition in this marketing area than in such other marketing area but which plant maintains pooling status for the month under such other Federal order;

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pool plant requirements of another Federal order and from which greater shipments are made during the month to plants regulated under such order than are made to plants regulated under this order;

(5) A distributing plant from which total route disposition (except filled milk) in the marketing area during the month averages 300 pounds or less per day; or

(6) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk products for Grade A disposition.

§ 1125.8 Nonpool plant.

"Nonpool plant" means any plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which during the month an average of more than 300 pounds daily of fluid milk products is disposed of as route disposition in the marketing area.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are moved to a pool plant during the month.

(e) "Exempt distributing plant" means a plant, other than a pool supply plant or a regulated plant under another Federal order that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed an average of 300 pounds daily. For purposes of this paragraph, route disposition shall not include receipts from a transferor-plant pursuant to the proviso of § 1125.3(a).

§ 1125.9 Handler.

"Handler" means:

(a) The operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it caused to be diverted for the account of such cooperative association from a pool plant to a nonpool plant, or pursuant to § 1125.40(b)(3);

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) The operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) The operator of an other order plant from which route disposition is made in the marketing area during the month;

(g) The operator of an unregulated supply plant; and

(h) The operator of an exempt distributing plant.

§ 1125.10 Producer-handler.

"Producer-handler" means a person who is engaged in the production of milk and also operates a plant from which during the month an average of more than 300 pounds daily of fluid milk products, except filled milk, is disposed of as route disposition within the marketing area and who has been so designated by the market administrator upon his determination that all of the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section. Any state institution shall be a producer-handler exempt from the provisions of this section and §§ 1125.30 and 1125.32 with respect to milk of its own production and receipts from pool plants processed or received for consumption in

State institutions and with respect to movements of milk to or from a pool plant.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in his capacity as a handler) complete and exclusive control over the operation and management of a plant at which he handles and processes milk received from his milk production resources and facilities (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in his capacity as a dairy farmer).

(2) The producer-handler neither receives at his designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of his milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than:

(i) His designated milk production resources and facilities,

(ii) Pool plants within the limitation specified in paragraph (c)(2) of this section, or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) Designation of any person as a producer-handler following a cancellation of his prior designation shall be preceded by performance in accordance with paragraphs (a)(1), (2), and (3) of this section for a period of 1 month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handle;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of his milk production resources and facilities; and

(2) As milk handling, processing and distribution resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partiallv owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraphs (c)(1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a)(1), (2), and (3) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(1) Milk from the designated milk production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which do not exceed in the aggregaete a daily average during the month of 100 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.5 of this chapter that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1125.11 [Reserved]

§ 1125.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1125.9(c); or

(3) Diverted from a pool plant in accordance with § 1125.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1125.44(a)(9)(iii) and the corresponding step of § 1125.44(b);

(3) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order;

(4) Any person who during the month has disposed of as route disposition or to consumers at the farm an average of more than 110 pounds daily of fluid milk or fluid cream products; or

(5) Any person (known as a dairy farmer for other markets) whose milk was received at a nonpool plant or a commercial food processing establishment during the month as other than producer milk under this or any other Federal milk order.

§ 1125.13 Producer milk.

"Producer milk" or "milk received from producers" means skim milk and butterfat in milk produced by producers which is received for the account of a handler as follows:

(a) With respect to receipts at a pool plant, producer milk shall include:

(1) Milk received at such plant directly from producers;

(2) Milk diverted from such pool plant to a nonpool plant or pursuant to § 1125.40(b)(3) for the account of the operator of the pool plant, subject to the conditions set forth in paragraph (c) of this section; and

(3) Milk received at such pool plant from a cooperative association in its capacity as a handler pursuant to § 1125.9(c) for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to milk for which a cooperative association is a handler in a capacity other than as the operator of a pool plant, producer milk shall include:

(1) Milk diverted from a pool plant to a nonpool plant or pursuant to § 1125.40(b)(3) for the account of the cooperative association, subject to the conditions set forth in paragraph (c) of this section; and

(2) Milk for which the cooperative association is a handler pursuant to § 1125.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1125.30(c) and 1125.31(a) and making payments to producers pursuant to § 1125.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler;

(c) With respect to diversions to nonpool plants or pursuant to § 1125.40(b)(3):

(1) Milk of any producer may be diverted by a cooperative association or its agent for its account pursuant to § 1125.9(b) from pool distributing plants to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the producer milk which the association or its agent causes to be delivered to pool distributing plants, or diverted therefrom. No percentage limit shall apply during the months of May through August;

(2) Milk of any producer may be diverted by a cooperative association or its agent for its account pursuant to § 1125.9(b) from pool supply plants to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk so diverted may not exceed 50 percent of the producer milk which the association or its agent causes to be delivered to all such pool supply plants or diverted therefrom during the month;

(3) A handler, other than a cooperative association, operating a pool distributing plant may divert therefrom for his account to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk diverted may not exceed 80 percent during the months of September through April of the milk received at or diverted from such handler's pool distributing plant from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) or (c)(2) of this section and for which the operator of such plant is the handler during the month. No percentage limit shall apply during the months of May through August;

(4) A handler, other than a cooperative association, operating a pool supply plant may divert therefrom for his account to nonpool plants or pursuant to § 1125.40(b)(3). The total quantity of milk so diverted may not exceed 50 percent of the total milk received at or diverted from such pool plant during the month from any producer other than a member of a cooperative association which markets milk under paragraph (c)(1) or

(c)(2) of this section and for which the operator of such plant is the handler during the month;

(5) Milk diverted in excess of the limits specified shall not be considered producer milk, and the diverting handler shall specify the producers whose milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by the handler during the month;

(6) Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(7) For purposes of location adjustments pursuant to §§ 1125.52 and 1125.75, milk diverted to a nonpool plant or pursuant to § 1125.40(b)(3) shall be priced at the location of the plant or commercial food processing establishment to which diverted; and

(d) In the case of any bulk tank load of milk originating at farms and subsequently divided among plants, the proportion of the load received at each plant shall be prorated among the individual producers involved on the basis of their respective percentage of the total load.

§ 1125.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1125.40(b)(1) from any source other than producers, handlers described in § 1125.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1125.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1125.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1125.40(b)(1)) for which the handler fails to establish a disposition.

§ 1125.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, mixtures of cream and milk or skim milk containing less than 18 percent butterfat (including those which are sterilized or aseptically packaged), filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use and milk or milk products (including filled milk) that are sterilized and packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1125.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 18 percent or more butterfat, with or without the addition of other ingredients.

§ 1125.17 Filled milk.

"Filled milk" means any conbination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product; and contains less than 6 percent nonmilk fat (or oil).

§ 1125.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

1125.19 Product prices.

The following product prices shall be used n calculating the basic Class II formula rice pursuant to § 1125.51a:

(a) *Butter price.* "Butter price" means the mple average, for the first 15 days of the onth, of the daily prices per pound of rade A (92-score) butter. The prices used hall be those of the Chicago Mercantile xchange as reported and published weekly y the Dairy Division, Agricultural Marketg Service. The average shall be computed y the Director of the Dairy Division, using e price reported each week as the daily rice for that day and for each following ork-day until the next price is reported. A ork-day is each Monday through Friday, xcept national holidays. For any week that e Exchange does not meet to establish a rice, the price for the following week shall e the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese rice" means the simple average, for the rst 15 days of the month, of the daily rices per pound of cheddar cheese in 40-ound blocks. The prices used shall be those the National Cheese Exchange (Green ay, WI), as reported and published weekly y the Dairy Division, Agricultural Marketg Service. The average shall be computed y the Director of the Dairy Division, using e price reported each week as the daily rice for that day and for each following ork-day until the next price is reported. A ork-day is each Monday through Friday, xcept national holidays. For any week that e Exchange does not meet to establish a rice, the price for the following week shall e the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry ilk price" means the simple average, for e first 15 days of the month, of the daily rices per pound of nonfat dry milk, which verage shall be computed by the Director the Dairy Division as follows:

(1) The prices used shall be the prices sing the midpoint of any price range as e price) of high heat, low heat and Grade nonfat dry milk, respectively, for the Cenal States production area, as reported and ublished weekly by the Dairy Division, Agcultural Marketing Service.

(2) For each week, determine the simple verage of the prices reported for the three pes of nonfat dry milk. Such average shall e the daily price for the day that such rices are reported and for each preceding ork-day until the day such prices were preously reported. A work-day is each onday through Friday except national olidays.

(3) Add the prices determined in paraaph (c)(2) of this section for the first 15 ays of the month and divide by the umber of days for which there is a daily rice.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

HANDLER REPORTS

§ 1125.30 Reports of receipts and utilization.

On or before the 9th day of each month each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for the preceding month:

(a) Each handler operating a pool plant(s) shall report separately for each pool plant:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk received directly from producers, showing separately any milk of own-farm production;

(ii) Milk received from a cooperative association pursuant to § 1125.9(c);

(iii) Fluid milk products and bulk fluid cream products received from other pool plants showing filled milk separately;

(iv) Other source milk showing filled milk separately; and

(v) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1125.40(b)(1).

(2) The utilization of all skim milk and butterfat required to be reported, including separate statements of quantities in route disposition inside and outside the marketing area.

(b) Each producer-handler shall report:

(1) The quantities of skim milk and butterfat contained in:

(i) Milk of own-farm production;

(ii) Receipts of fluid milk products and fluid cream products from pool plants, showing separately receipts in packaged form and in bulk; and

(iii) Other source milk, showing separately any receipts from another dairy farmer.

(2) As specified in paragraph (a)(2) of this section.

(c) Each cooperative association shall report with respect to milk for which it is the handler pursuant to either § 1125.9 (b) or (c):

(1) The quantities of skim milk and butterfat received from producers;

(2) The utilization of skim milk and butterfat for which it is the handler pursuant to § 1125.9(b); and

(3) The quantities of skim milk and butterfat delivered to each pool plant pursuant to § 125.9(c).

(d) Each handler who operates a partially regulated distributing plant shall report as specified in paragraphs (a)(1) and (2) of this section except that receipts from dairy farmers in Grade A milk shall be reported in lieu of those in producer milk. Such report shall include separate statements, respectively, showing the respective amounts of skim milk and butterfat disposed of as route disposition in the marketing area as Class I milk and the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area.

(e) Each handler who operates an other order plant with route disposition of fluid milk products in the marketing area shall report the quantities of skim milk and butterfat in such disposition.

§ 1125.31 Payroll reports.

On or before the 22nd day of each month handlers shall report to the market administrator as follows:

(a) Each handler with respect to each of his pool plants and each cooperative association which is a handler pursuant to § 1125.9(b) or (c) shall submit his producer payroll for deliveries (other than his own-farm production) in the preceding month which shall show:

(1) The total pounds of milk received from each producer, the pounds of butterfat contained in such milk, and the number of days on which milk was delivered by such producer in such month;

(2) The amount of payment to each producer and cooperative association; and

(3) The nature and amount of any deductions or charges involved in such payments.

(b) Each handler operating a partially regulated distributing plant who wishes computations pursuant to § 1125.76(a) to be considered in the computation of his obligation pursuant to § 1125.76 shall submit his payroll for deliveries of Grade A milk by dairy farmers which shall show:

(1) The total pounds of milk and the butterfat content thereof received from each dairy farmer;

(2) The amount of payment to each dairy farmer (or to a cooperative association on behalf of such dairy farmer); and

(3) The nature and amount of any deductions or charges involved in such payments.

§ 1125.32 Other reports.

At such time and in such manner as the market administrator may prescribe, each handler shall report to the market administrator such information in addition to that required under §§ 1125.30 and 1125.31 as may be requested by the market administrator with respect to milk and milk products (including filled milk) handled by him.

CLASSIFICATION OF MILK

§ 1125.40 Classes of utilization.

Except as provided in § 1125.42 all skim milk and butterfat required to be reported by a handler pursuant to § 1125.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In all bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment or in producer milk diverted to a commercial food processing establishment in Pacific County, Washington, subject to the conditions of § 1125.42(e), at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and

ii) Any milk or milk product sterilized
packaged in hermetically sealed metal
lass containers.

) *Class III milk.* Class III milk shall be
kim milk and butterfat:

) Used to produce:

) Cheese (other than cottage cheese,
fat cottage cheese, and dry curd cottage
ese);

) Butter;

i) Any milk product in dry form;

v) Any concentrated milk product in
fluid form that is used to produce a
ss III product;

) Evaporated or condensed milk (plain
weetened) in a consumer-type package
evaporated or condensed skim milk
in or sweetened) in a consumer-type
kage; and

i) Any product not otherwise specified in
section;

) In inventory at the end of the month
luid milk products in bulk form and
ducts specified in paragraph (b)(1) of
section in bulk form;

) In fluid milk products and products
ified in paragraph (b)(1) of this section
are disposed of by a handler for animal
;

) In fluid milk products and products
ified in paragraph (b)(1) of this section
are dumped by a handler if the market
inistrator is notified of such dumping in
ance and is given the opportunity to
fy such disposition;

) In skim milk in any modified fluid milk
duct that is in excess of the quantity of
milk in such product that was included
ain the fluid milk product definition pur-
nt to § 1125.15; and

) In shrinkage assigned pursuant to
25.41(a) to the receipts specified in
25.41(a)(2) and in shrinkage specified in
25.41 (b) and (c).

25.41 Shrinkage.

r purposes of classifying all skim milk
butterfat to be reported by a handler
suant to § 1125.30, the market adminis-
or shall determine the following:

) The pro rata assignment of shrinkage
kim milk and butterfat, respectively, at
pool plant to the respective quantities
kim milk and butterfat:

) In the receipts specified in paragraphs
(1) through (6) of this section on which
nkage is allowed pursuant to such para-
ph; and

) In other source milk not specified in
agraphs (b) (1) through (6) of this sec-
which was received in the form of a
fluid milk product or a bulk fluid
m product;

) The shrinkage of skim milk and but-
at, respectively, assigned pursuant to
agraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to a nonpool plant or to a commercial food processing establishment pursuant to § 1125.40(b)(3) and milk received from a handler described in § 1125.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1125.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to a nonpool plant or to a commercial food processing establishment pursuant to § 1125.40(b)(3), except that if the operator of the plant or establishment to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1125.9 (b) or (c) but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of a plant or a commercial food processing establishment pursuant to § 1125.40(b)(3) to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1125.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1125.44(a)(13) and the corresponding step of § 1125.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1125.44(a)(8) or the corresponding step of § 1125.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) It the transferor-handler received during the month other source milk to be allocated pursuant to § 1125.44(a) (12) or (13) or the corresponding steps of § 1125.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this pargraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1125.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As class I milk if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1125.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) *Transfers and diversions to a commercial food processing establishment.* Skim milk and butterfat transferred or diverted to a commercial food processing establishment shall be classified:

(1) Subject to the provisions of § 1125.13(c) and, except as provided in paragraph (e)(2) of this section, as Class II milk if diverted pursuant to § 1125.40(b)(3); or

(2) Transfers or diversions shall be classified as Class I milk unless the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification.

§ 1125.43 General classification rules.

In determining the classification of producer milk pursuant to § 1125.44 , the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1125.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1125.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1125.40, 1125.41, and 1125.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1125.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1125.40 through 1125.45, butterfat in skim milk, either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.060 percent unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1125.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1125.9(a) for each of his pool plants separately and of each handler described in § 1125.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1125.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1125.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1125.40(b)(1) that were in inventory at the beginning of the month in packaged from, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to any product specified in § 1125.40(b) but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1125.40(b)(1) that was not subtracted pursuant to paragraphs (a) (5), (6), and (7) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1125.12(b)(5);

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (8)(v) of this section for which the handlier requests a classification other than Class I, but not in excess of pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (8)(v), and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(9)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentages that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(10) Subtract from the pounds of skim milk remaining in each class, in series, beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1125.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (4), (6), and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated, to class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (8)(v), (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in reverse the direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a) (8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(13) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1125.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(13) (ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1125.42(a); and

(15) If the total pounds of skim milk remaining in all classes exceed the pounds of skim in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

§ 1125.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1125.44(a)(13) and the corresponding step of § 1125.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1125.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1125.50 Class prices.

Subject to the provisions of § 1125.52, the class prices for the month, per hundredweight of milk, shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.85.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price. If the Class III price for the month is computed pursuant to paragraphs (c) (1) through (3) of this section, the final Class II price shall be reduced by the amount that the Class III price is less than the basic formula price to the extent such reduction does not cause the Class II price to be less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1125.51 and add 25 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1125.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month but not to exceed the price computed as follows:

(1) Multiply the Chicago butter price pursuant to § 1125.51 by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under paragraphs (c) (1) and (2) of this section subtract 48 cents, and round to the nearest cent.

[48 FR 52870, Nov. 23, 1983, as amended at 51 FR 12834, Apr. 16, 1986]

§ 1125.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1125.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1125.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1125.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follow:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1125.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the Washington counties of King, Kitsap, Pierce, and Snohomish;

(2) Zone 2 shall include:

(i) The Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone;

(ii) The Oregon counties of Benton, Clackamas, Columbia, Hood River, Linn, Marion, Multnomah, Polk, Wasco, Washington, and Yamhill; and

(iii) The Washington counties of Clark, Cowlitz, Ferry, Lincoln, Pend Orielle, Skamania, Spokane, Stevens, Wahkiakum, and Whitman;

(3) Zone 3 shall include the Washing counties of Island, Mason, Skagit, and Th ston;

(4) Zone 4 shall include the Washing counties of Grays Harbor, Lewis, Pa and Whatcom;

(5) Zone 5 shall include:

(i) The Idaho counties of Lewis and Perce;

(ii) The Oregon counties of Gill Morrow, Sherman, and Umatilla; and

(iii) The Washington counties of Ada Asotin, Benton, Chelan, Columbia, Doug Franklin, Garfield, Grant, Kittitas, Kli tat, Okanogan, Walla Walla, and Yaki and

(6) Zone 6 shall include the Washing counties of Clallam, Jefferson, and Juan.

(b) For milk received at a plant from ducers and which is classified as Clas milk, the price specified in § 1125.50(a) be adjusted by the amount stated in pa graphs (b) (1) and (2) of this section for location of such plant:

(1) For a plant located within one of zones described in paragraphs (a) through (6) of this section, the adjustm shall be as follows:

	Adjustment per hundredweig
Zone 1	No adjustment
Zone 2	Plus 10 cents
Zone 3	Minus 4 cents
Zone 4	Minus 6 cents
Zone 5	Minus 10 cents
Zone 6	Minus 16 cents

(2) For a plant located outside of on the zones described in paragraphs (a) through (6) of this section, the adjustm shall be minus 1.5 cents per hundredwe for each 10 miles or fraction thereof shortest hard-surfaced highway dista that the plant is located from the neare the County Courthouse in Spokane or County-City Building in Seattle.

(c) The Class I price applicable to oth source milk shall be adjusted at the ra set forth in paragraph (b) of this secti except that the price when adjusted for cation shall not be less than the the C III price.

(d) For fluid milk products transferred bulk from a pool plant to another pool pl at which a higher Class I price applies which is classified as Class I, the price sh be the Class I price applicable at the lo tion of the transferee-plant subject to a cation adjustment credit for the transfer plant determined by the market administ tor as follows:

(1) Subtract from the pounds of Class I maining at the transferee-plant after

computations pursuant to § 1125.44 (a)(13) and (b) the pounds of packaged fluid milk products from other pool plants;

(2) Subtract the pounds of bulk fluid milk products received at the transferee-plant from the following sources:

(i) Producers;

(ii) Handlers described in § 1125.9(c); and

(iii) Pool plants at which the same or a higher Class I price applies;

(3) Assign any pounds remaining to transferor-plants in sequence beginning with the plant at which the least adjustment would apply; and

(4) Multiply the pounds so computed for each transferor-plant by the difference in the Class I prices applicable at the transferee-plant and transferor-plant.

§ 1125.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1125.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the pricing constituent that is required.

UNIFORM PRICE

§ 1125.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1125.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1125.44(c), by the applicable class prices (adjusted pursuant to § 1125.52) and add together the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage deducted from each class pursuant to § 1125.44(a)(15) and the corresponding step of § 1125.44(b) by the class prices applicable at the location of the pool plant, as adjusted by the butterfat differential specified in § 1125.74. In case overage occurs in a nonpool plant located on the same premises as a pool plant, such overage shall be prorated between the quantity transferred from the pool plant and other source milk in such nonpool plant, add an amount equal to the value of overage allocated to the transferred quantity at the class price applicable at the pool plant;

(c) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class III price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1125.44(a)(8) (i) through (iv) and (vii) and the corresponding step of § 1125.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1125.44(a)(8) (v) and (vi) and the corresponding step of § 1125.44(b);

(e) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price adjusted pursuant to § 1125.52, or the Class II price as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1125.44(a)(10) and the corresponding step of § 1125.44(b);

(f) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1125.44(a)(12) and the corresponding step of § 1125.44(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by a handler fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order; and

(g) Add or subtract as the case may be, the amount necessary to correct errors as disclosed by the verification of reports of such handler of his receipts and utilization of skim milk and butterfat in previous months for which payment has not been made.

§ 1125.61 Computation of uniform price.

For each month the market administrator shall compute the "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1125.60 for all handlers who filed the reports prescribed by § 1125.30 for the month and who made the payments pursuant to § 1125.71 for the preceding month;

(b) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments computed pursuant to § 1125.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1125.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1125.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1125.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1125.71 and 1125.76 and out of which he shall make all payments to handlers pursuant to § 1125.72. However, the market administrator shall offset the payment due to a handler for such fund against payments due from such handler.

§ 1125.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month during which the skim milk and butterfat were received, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the total amount specified in paragraph (a)(2) of this section:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1125.60; and

(ii) For a cooperative association handler, the amount due from other handlers pursuant to § 1125.73(d) but without adjustment for butterfat;

(2) The sum of:

(i) The value of milk received by such handler from producers at the applicable uniform price pursuant to § 1125.73(a)(1) but without adjustmentfor butterfat;

(ii) The amount to be paid to cooperative associations pursuant to §11.25.73(d) but without adjustment for butterfat; and

(iii) The value at the uniform price for all skim milk and butterfat applicable at the location of the plants(s) from which received (not to be less than the value at the Class III price) with respect to other source milk for which a value is computed pursuant to §1125.60(f).

(b) On or before the 25th day after the end of the month, each handler operating a plant specified in § 1125.7(c) (2) and (3), if such plant is subject to the classification and pricing provisions of another order which provides for individual handler pooling, shall pay to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk disposed of as route disposition in the marketing area which was allocated to Class I at such other order plant. If reconstituted skim milk in filled milk is disposed of from such plant as route disposition in the marketing areas regulated by two or more market pool orders, the reconstituted skim milk assigned to Class I shall be prorated according to such disposition in each area; and

(2) Compute the value of the quantity assigned in paragraph (b)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and subtract its value at the Class III price.

§ 1125.72 Payments from the producer-settlement fund.

On or before the 18th day after the end of the month during which the skim milk and butterfat were received, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §1125.71(a)(2) exceeds the amount computed pursuant to §1125.71(a)(1), and less any unpaid obligations of such handler to the market administrator pursuant to §§ 1125.71(a), 1125.77, 1125.85, and 1125.86. However, if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1125.73 Payments to producers and to cooperative associations.

(a) Each handler shall make payments to each producer for milk received from such producer during the month:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, at not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer; and

(2) On or before the 19th day after the end of each month for milk received from such producers during such month:

(i) At not less than the uniform price for the quantity of milk received, adjusted by the butterfat differential pursuant to § 1125.74 and by any location adjustments applicable under § 1125.75;

(ii) Minus payments made pursuant to paragraph (a)(1) of this section. However, if by such date such handler has not received full payment for such month pursuant to § 1125.72, he shall not be deemed to be in violation of this paragraph if he reduced uniformly for all producers his payments per hundredweight pursuant to this paragraph by a total amount not in excess of the reduction in payment from the market administrator, however, the handler shall make such balance of payment uniformly to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payments is received from the market administrator.

(b) The payments required in paragraph (a) of this section shall be made, upon request, to a cooperative association qualified under § 1125.18, or its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this paragraph shall be made on or before 2 days prior to the dates specified in paragraph (a) of this section.

(c) Each handler shall pay to each cooperative association or its duly authorized agent which operates a pool plant for skim milk and butterfat received from such plant:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for skim milk and butterfat received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 17th day after the end of the month, an amount of money computed by multiplying the total pounds of such skim milk and butterfat in each class pursuant to § 1125.42(a) by the class price adjusted by the butterfat differential and taking into account any location adjustments as provided by § 1125.52 applicable at the pool plant of the cooperative association or its agent, minus payment made pursuant to paragraph (c)(1) of this section.

(d) Each handler who received milk for which a cooperative association is the handler pursuant to § 1125.9(c) shall pay such cooperative association for such milk received:

(1) On or before the 2nd day prior to the date specified in paragraph (a)(1) of this section for such milk received during the first 15 days of that month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of each month, for the milk received at not less than the uniform price for all milk adjusted pursuant to §§ 1125.74 and 1125.75(b), minus payments made pursuant to paragraph (d)(1) of this section.

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provisions of the Act.

(f) In making payments to producers pursuant to this section, each handler, on or before the 19th day of each month shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show for the preceding month:

(1) The identity of the handler and the producer;

(2) The total pounds of milk delivered by the producer and the average butterfat test thereof and the pounds per shipment if such information is not furnished to the producer each day of delivery;

(3) The minimum rate at which payment to the producer is required under the provisions of this section;

(4) The rate per hundredweight and amount of any premiums or payments above the minimum price provided by the order;

(5) The amount or rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(g) In making payments to a cooperative association in aggregate pursuant to this section, each handler upon request shall furnish to the cooperative association, with respect to each producer for whom such payment is made, any or all of the above information specified in paragraph (f) of this section.

§ 1125.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago as reported by the Department for the month. § 1125.75 Plant location adjustment for producers and nonpool milk.

(a) In making payment to producers pursuant to § 1125.73(a) subject to the application of § 1125.13(c)(7) appropriate adjustments shall be made per hundredweight of milk received from producers at respective plant locations at the same rate as specified for Class I milk set forth in § 1125.52.

(b) In making payments to a cooperative association pursuant to § 1125.73(d) appropriate adjustments shall be made at the rates specified for Class I milk in § 1125.52 for the location of the plant at which the milk was received from the cooperative association.

(c) For purposes of computations pursuant to §§ 1125.71(a) and 1125.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1125.52 for Class I milk applicable at the location of the nonpool plant from which the milk or filled milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1125.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1125.30(d) and 1125.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1)(i) The obligation that would have been computed pursuant to § 1125.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classifed as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk, except that reconstituted skim milk in filled milk shall be valued at the Class III price. No obligation shall apply to Class I milk transferred to a pool plant or another order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which an equivalent amount of milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1125.60(f) and a credit in the amount specified in § 1125.71(a)(2)(iii) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified in paragraph (a)(1)(ii) of this section; and

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1125.30(d) and 1125.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1125.7(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant adjusted to a 3.5 percent butterfat basis by the butterfat differential pursuant to § 1125.74, and like payments made by the operator of a supply plant(s) included in the computations pursuant to paragraph (a)(1) of this section and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determined the respective amounts of skim milk and butterfat disposed of as route disposition of Class I milk within the marketing area;

(2) Deduct the respective amount of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any payment obligation under this or any other order;

(3) Deduct the quantity of reconstituted skim milk in fluid milk products disposed of as route disposition in the marketing area;

(4) [Reserved]

(5) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location (not to be less than the Class III price), and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price applicable at the location of the nonpool plant (but not to be less than the Class III price) less the value of such skim milk at the Class III price.

§ 1125.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred following the 5th day after such notice.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1125.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1125.44(a) (8) and (12) and the corresponding steps of § 1125.44(b), except such other source milk on which no handler obligation applies pursuant to § 1125.60(f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order issued pursuant to the Act; and

(2) Specified in § 1125.76(b)(2)(ii).

§ 1125.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than with respect to milk of such handler's own production) pursuant to § 1125.73(a)(2), shall make a deduction of 5 cents per hundredweight of milk or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, with respect to the following:

(1) All milk received from producers at a plant not operated by a cooperative association.

(2) [Reserved]

(3) All milk received at a plant operated by a cooperative association from producers for whom the marketing services set forth below in this subparagraph are not being performed by the cooperative association as determined by the market administrator. Such deduction shall be paid by the handler to the market administrator on or before the 16th day after the end of the month. Such moneys shall be expended by the market administrator for the verification of weights, sampling and testing of milk received from producers, and in providing for market information to producers; such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of each producer;

(1) Who is a member of, who has given written authorization for the rendering of marketing service and the taking of deduction therefore to a cooperative association;

(2) Whose milk is received at a plant not operated by such association; and

(3) For whom the market administrator determines that such association is performing the services described in paragraph (a) of this section, each handler shall deduct, in lieu of the deduction specified under paragraph (a) of this section, from the payments made pursuant to § 1125.73(a)(2) the amount per hundredweight on milk authorized by such producer and shall pay, on or before the 18th day after the end of the month, such deduction to the association entitled to receive it under this paragraph.

PART 1126—MILK IN THE TEXAS MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1126.85 Assessment for order administration.
1126.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 40 FR 23438, May 30, 1975, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1126.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1126.2 Texas marketing area.

The "Texas marketing area," hereinafter called the "marketing area," means all territory within the boundaries of the following Texas counties, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

ZONE 1

Camp, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill (Blum and Itasca divisions only), Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

ZONE 1-A

Archer, Baylor, Clay, Hardeman, Montague, Wichita and Wilbarger.

ZONE 2

Gregg, Harrison, Marion, Panola, Rusk, Smith.

ZONE 3

Anderson, Bell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Hill (except Blum and Itasca divisions), Lampasas, Limestone, McLennan, Mills, Navarro.

Zone 4

elina, Houston, Jasper, Leon, Nacog-
s, Newton, Polk, Sabine, San Augus-
Shelby, Trinity, Tyler.

Zone 5

os, Robertson, Burleson, Grimes,
on, Milam, Walker.

Zone 6

rews, Borden, Brown, Callahan, Coke,
an, Dawson, Eastland, Ector, Fisher,
, Glasscock, Haskell, Howard, Jack,
Kent, King, Knox, Martin, Midland,
ell, Nolan, Palo Pinto, Runnels,
, Shackelford, Stephens, Sterling,
wall, Taylor, Throckmorton, Tom
, Young.

Zone 7

rop, Burnet, Lee, Travis, Williamson.

Zone 8

in, Brazoria, Chambers, Colorado,
te, Fort Bend, Galveston, Hardin,
, Jefferson, Liberty, Montgomery,
e, San Jacinto, Waller, Washington.

Zone 9

ar, Caldwell, Comal, De Witt, Gon-
Guadalupe, Hays, Jackson, Lavaca,
orda, Wharton, Wilson.

Zone 10

nsas, Bee, Calhoun, Goliad, Karnes,
Oak, Refugio, Victoria.

Zone 11

oks, Duval, Jim Wells, Kenedy, Kle-
Nueces, San Patricio.

Zone 12

neron, Hidalgo, Willacy.

R 23438, May 30, 1975, as amended at
54422, Dec. 3, 1982]

.3 Route disposition.

oute disposition" means any deliv-
(including any delivery by a
or or disposition at a plant store)
fluid milk product classified as
I milk, other than a delivery to a
.

.4 Plant.

lant" means the land, buildings,
ities, and equipment constituting
ngle operating unit or establish-
at which milk or milk products
uding filled milk) are received,
essed, or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§§ 1126.5—1126.6 [Reserved]

§ 1126.7 Pool plant.

Except as provided in paragraph (f) of this section, "pool plant" means:

(a) Any plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A fluid milk products at such plant, including producer milk diverted from the plant; and

(2) Total route disposition, except filled milk, equal to 50 percent or more of the receipts of Grade A fluid milk products at such plant, including producer milk diverted from the plant. If two plants operated by the same handler each meet the performance requirement of paragraph (a)(1) of this section and such handler requests that the two plants be considered together for the purpose of meeting the total route disposition requirement, each such plant shall be deemed to have met the total disposition requirement of this paragraph if the combined route disposition, except filled milk, of such plants is 50 percent or more of the combined receipts of Grade A fluid milk products at such plants, including producer milk diverted from the plants.

(b) Any plant, other than a plant described in paragraph (a) of this section, that is approved by a duly constituted regulatory agency for the disposition of Grade A milk in the marketing area and from which during the month 50 percent or more of the receipts at such plant of Grade A milk from dairy farmers (including producer milk diverted from the plant but excluding milk received as diverted milk) and handlers described in § 1126.9(c) is transferred in the form of a bulk fluid milk product, except filled milk, to pool plants described in paragraph (a) of this section, except that such percentage shall be 15 percent for the months of:

(1) August, if the plant was a pool plant under this paragraph or paragraph (d) of this section during the immediately preceding month of July; and

(2) December, if the plant was a pool plant under this paragraph during the immediately preceding month of November.

(c) Any plant, other than a plant described in paragraph (a) or (b) of this section or that qualifies as a pool plant under another Federal order, from which during the month 50 percent or more of the receipts at such plant of Grade A milk from dairy farmers (including milk diverted from the plant but excluding milk received as diverted milk) and handlers described in § 1126.9(c) is transferred in the form of a bulk fluid milk product, except filled milk, to pool plants described in paragraph (a) of this section and distributing plants fully regulated under other Federal orders, if the total quality so transferred to pool plants exceeds in the case of each other order the total quantity so transferred to other order distributing plants, except that:

(1) For the following months, such percentage shall be 15 percent and shall apply only to transfers to pool plants described in paragraph (a) of this section:

(i) August, if the plant was a pool plant under this paragraph or paragraph (d) of this section during the immediately preceding month of July; and

(ii) December, if the plant was a pool plant under this paragraph during the immediately preceding month of November; and

(2) Such plant shall not be a pool plant under this paragraph in any of the months of February through July unless it was a pool plant under this paragraph in three or more of the immediately preceding months of September through January.

(d) Any plant during the months of February through July, other than a plant described in paragraph (a) this section, that was a pool pl under paragraph (b) or (c) of this tion during each of the immediat preceding months of Septemb through January and is approved by duly constituted regulatory agency the disposition of Grade A milk in th marketing area, subject to the follo ing conditions:

(1) For the months of Febru through July 1975, the required qu fication under paragraph (b) of th section in prior months shall deemed to have been met if the pla was a pool supply plant under th Austin-Waco, West Texas, Corp Christi, North Texas, San Antonio, South Texas orders (or any combin tion thereof) during the months September, October, and Novemb 1974; and

(2) If the plant operator files wi the market administrator prior to of the months of February throu July a written request for nonpo status, a plant shall not be a po plant under this paragraph during of such remaining months throu July.

(e) Any plant located in the marke ing area that is operated by a cooper tive association if pool plant stat under this paragraph is requested such plant by the cooperative associ tion and 60 percent or more of th producer milk of members of the coop erative association (excluding suc milk that is received at or diverte from pool plants described in par graphs (b), (c) and (d) of this sectio is physically received during th month in the form of a bulk fluid mil product at pool plants described paragraph (a) of this section either rectly from farms or by transfer fro plants of the cooperative associati for which pool plant status under th paragraph has been requested, subje to the following conditions:

(1) The plant does not qualify as pool plant under paragraph (a), (b), or (d) of this section or under the pro visions of another Federal order appli cable to a distributing plant or supply plant; and

(2) The plant is approved by a du constituted regulatory agency for th

disposition of Grade A milk in the marketing area.

(f) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area;

(4) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) A plant qualified pursuant to paragraph (b) or (c) of this section which has automatic pooling status under another Federal order.

EDITORIAL NOTE: At 53 FR 33103, Aug. 30, 1988, § 1126.7(d) introductory text was amended by temporarily suspending the words "during the months of February through July" and "under paragraph (b) or (c) of this section", effective August 1988 through July 1989. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" were also temporarily suspended, effective August 1988 through July 1989.

§ 1126.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a governmental agency plant, or a producer-handler plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is not an other order plant, a governmental agency plant, or a producer-handler plant.

(e) "Governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1126.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the cooperative association from a pool plant of another handler in accordance with § 1126.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person who is a producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1126.7(f).

§ 1126.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Whose receipts of fluid milk products (including such products which he obtains at a location other than his processing plant for distribution on his routes) during the month from pool plants do not exceed the lesser of 5 percent of his Class I disposition during the month or 10,000 pounds;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

[40 FR 23438, May 30, 1975, as amended at 44 FR 5868, Jan. 30, 1979]

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition in the marketing area as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1126.9(c); or

(3) Diverted from a pool plant in accordance with § 1126.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency that operates a plant exempt pursuant to § 1126.8(e);

(3) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1126.44(a)(8)(iii) and the corresponding step of § 1126.44(b);

(4) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Any person with respect to milk produced by him during the months of February through July that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during any of the immediately preceding months of September through November more than one-third of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of § 1126.13(e) (4) and (5)), unless such pool plant was a nonpool plant during any of such immediately preceding months.

[40 FR 23438, May 30, 1975, as amended at 43 FR 44825, Sept. 29, 1978]

§ 1126.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1126.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1126.9(c), is the handler for such milk;

(d) Diverted from a pool plant described in § 1126.7(a) for the account of the handler operating such plant to another pool plant, except that milk diverted to a plant operated by a cooperative association may not be milk of the cooperative association's members. Milk so diverted shall be priced at the plant to which diverted; or

(e) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the handler operating such pool plant or a handler described in § 1126.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during any month unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant. If a dairy farmer loses his producer status under this order (except as a result of a temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed one-third of the producer milk that the cooperative association causes to be delivered during the month to pool plants described in § 1126.7(a), (b), (c), and (d) and that is physically received thereat;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(2) of this section. The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (e)(2) and (3) of this section shall not be producer milk. If the diverting handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler during the month to a nonpool plant shall be producer milk;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to become a nonpool plant shall not be producer milk; and

(6) Diverted milk shall be priced at the location of the plant to which diverted.

[40 FR 23438, May 30, 1975, as amended at 43 FR 44825, Sept. 29, 1978; 44 FR 5868, Jan. 30, 1979; 44 FR 50323, Aug. 28, 1979]

EDITORIAL NOTE: At 53 FR 33103, Aug. 30, 1988, in § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant", and in § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)", and in § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is elegible to be diverted by the plant operator" are temporarily suspended effective August 1988 through July 1989.

§ 1126.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1126.40(b)(1) from any source other than producers, handlers described in § 1126.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1126.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1126.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1126.40(b)(1)) for which the handler fails to establish a disposition.

§ 1126.15 Fluid milk product.

(a) Exept as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package, or reconstituted).

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[40 FR 23438, May 30, 1975, as amended at 40 FR 31945, July 30, 1975]

§ 1126.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1126.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1126.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

§ 1126.19 Current marketing period.

For the purpose of terminating this order under § 608c(16)(B) of the Act, the term "current marketing period" shall mean the first month following the date on which the Secretary publicly announces his finding that the termination of the order is favored by such majority of producers under the order as is prescribed by the Act.

§ 1126.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1126.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43402, Aug. 28, 1981]

HANDLER REPORTS

§ 1126.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1126.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1126.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1126.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of producer milk; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler who elects pursuant to § 1126.73(d) to pay producers shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The name and address of each producer;

(2) The amounts paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1126.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundred-weight and the net amount paid each dairy farmer.

§ 1126.32 Other reports.

(a) On or before the 24th day of each month, each handler described in § 1126.9(a), (b), and (c), except a cooperative association with respect to producer milk for which it elects to collect payments, shall report to the market administrator the following information with respect to its receipts of milk during the first 18 days of the month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1126.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 6th day after the end of each month, each handler described in § 1126.9(a), (b), and (c) shall report to the market administrator the following information with respect to its receipts of milk during such month:

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1126.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the second day prior to the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and §§ 1126.30 and 1126.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1126.40 Classes of utilization.

Except as provided in § 1126.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1126.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1126.15, plus the fluid equivalent of loss of nonfat milk solids occurring in the process of modification in any case where determination of the quantity of added nonfat milk solids disposed of in such products is based upon laboratory analysis by the market administrator, such loss allowable pursuant to this subparagraph not to exceed 2 percent of the fluid equivalent of the quantity of added nonfat milk solids so determined to be added; and

(6) In shrinkage assigned pursuant to § 1126.41(a) to the receipts specified in § 1126.41(a)(2) and in shrinkage specified in § 1126.41(b) and (c).

§ 1126.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1126.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1126.9(c) and in milk diverted to such plant from another pool plant, except that, in either face, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to

her plants that is not in excess of
e respective amounts of skim milk
d butterfat to which percentages
e applied in paragraphs (b)(1), (2),
), (5), and (6) of this section; and

(c) The quantity of skim milk and
tterfat, respectively, in shrinkage of
ilk from producers for which a coop-
ative association is the handler pur-
ant to § 1126.9(b) or (c), but not in
cess of 0.5 percent of the skim milk
d butterfat, respectively, in such
ilk. If the operator of the plant to
ich the milk is delivered purchases
ch milk on the basis of weights de-
rmined from its measurement at the
rm and butterfat tests determined
om farm bulk tank samples, the ap-
icable percentage under this para-
aph for the cooperative association
all be zero.

126.42 Classification of transfers and diversions.

a) *Transfers and diversions to pool
ants.* Skim milk or butterfat trans-
rred or diverted in the form of a
id milk product or a bulk fluid
eam product from a pool plant to an-
her pool plant shall be classified as
ass I milk unless both handlers re-
est the same classification in an-
her class. In either case, the classifi-
tion of such transfers or diversions
all be subject to the following condi-
ns:

1) The skim milk or butterfat classi-
d in each class shall be limited to
e amount of skim milk and butter-
, respectively, remaining in such
ss at the transferee-plant or diver-
-plant after the computations pur-
ant to § 1126.44(a)(12) and the corre-
onding step of § 1126.44(b);

2) If the transferor-plant or diver-
-plant received during the month
her source milk to be allocated pur-
ant to § 1126.44(a)(7) or the corre-
onding step of § 1126.44(b), the skim
lk or butterfat so transferred or di-
rted shall be classified so as to allo-
te the least possible Class I utiliza-
n to such other source milk; and

3) If the transferor-handler or di-
rtor-handler received during the
nth other source milk to be allocat-
pursuant to § 1126.44(a)(11) or (12)
the corresponding steps of
126.44(b), the skim milk or butter-
fat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk

products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1126.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1126.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence;

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class disposition from the nonpool plant hall be assigned to the extent possi- le in the following sequence:

(*a*) To such nonpool plant's receipts om dairy farmers who the market dministrator determines constitute egular sources of Grade A milk for ich nonpool plant; and

(*b*) To such nonpool plant's receipts f Grade A milk from plants not fully egulated under any Federal milk rder which the market administrator etermines constitute regular sources f Grade A milk for such nonpool lant;

(vi) Any remaining unassigned re- ipts of bulk fluid milk products at e nonpool plant from pool plants d other order plants shall be as- gned, pro rata among such plants, to e extent possible first to any re- aining Class I utilization, then to lass III utilization, and then to Class utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream oducts at the nonpool plant from ol plants and other order plants hall be assigned, pro rata among such ants, to the extent possible first to y remaining Class III utilization, en to any remaining Class II utiliza- on, and then to Class I utilization at ch nonpool plant; and

(viii) In determining the nonpool ant's utilization for purposes of this bparagraph, any fluid milk products d bulk fluid cream products trans- rred from such nonpool plant to a ant not fully regulated under any ederal milk order shall be classified the basis of the second plant's utili- tion using the same assignment pri- rities at the second plant that are set rth in this paragraph.

(e) *Transfers by a handler described § 1126.9(c) to pool plants.* Skim milk d butterfat transferred in the form f bulk milk by a handler described in 1126.9(c) to another handler's pool ant shall be classified pursuant to 1126.44 pro rata with producer milk ceived at the transferee-handler's ant.

1126.43 General classification rules.

In determining the classification of oducer milk, the following rules hall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1126.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1126.40, 1126.41, and 1126.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1126.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1126.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1126.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1126.9(a) for each of his pool plants separately the classification of producer milk and milk received from a handler described in § 1126.9(c), by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1126.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated

supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1126.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1126.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from a person described in § 1126.12(b)(5);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1126.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1126.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1126.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk, remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1126.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1126.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1126.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1126.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1126.44(a)(12) and the corresponding step of § 1126.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1126.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

CLASS PRICES

§ 1126.50 Class prices.

Subject to the provisions of § 1126.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I prices.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $3.28.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1126.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1126.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in para-

graph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1126.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[40 FR 23438, May 30, 1975, as amended at 46 FR 43402, Aug. 28, 1981; 51 FR 12834, Apr. 16, 1986]

§ 1126.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1126.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1126.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1126.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic class II formula price is affected by a determina tion document published on September 6, 1984, at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43402, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1126.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (10) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1-A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.
Zone 5	Plus 20 cents.
Zone 6	No adjustment.
Zone 7	Plus 30 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in the Texas Panhandle marketing area or in Lipscomb County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Texas Panhandle order (Part 1132) and the Class I price specified in § 1126.50(a).

(3) For a plant located in the Lubbock-Plainview, Texas, marketing area or in Parmer County, Texas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Lubbock-Plainview, Texas order (Part 1120) and the Class I price specified in § 1126.50(a).

(4) For a plant located in Bowie or Cass County, Texas, the adjustment shall be minus 20 cents.

(5) For a plant located in the State of Texas that is outside the designated pricing areas described in paragraphs (a)(1) through (4) and (a)(6) of this section, the adjustment shall be the adjustment applicable at the nearer of Corpus Christi, San Angelo, or San Antonio, Texas, except that for a plant located in the Texas counties of Brewster, Crane, Crockett, Culberson, Hudspeth, Irion, Jeff Davis, Loving, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Ward, and Winkler, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in San Angelo, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in the Rio Grande Valley marketing area or the New Mexico counties of Catron, Colfax, Hidalgo or Union, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Rio Grande Valley order (Part 1138) and the Class I price specified in § 1126.50(a).

(7) For a plant located in the Southwest Plains marketing area or in the Missouri counties listed below, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Southwest Plains order (Part 1106) and the Class I price specified in § 1126.50(a).

Barry
Cedar
Christian
Dade
Dallas
Douglas
Greene
Howell
Laclede
Lawrence
McDonald
Ozark
Polk
Pulaski
Stone
Taney
Texas
Webster
Wright

(8) For a plant located in the State of Arkansas, the minus adjustment shall be the difference between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1126.50(a).

(9) For a plant located in the State of Louisiana, no adjustment shall apply.

(10) For a plant located outside the designated pricing areas described in paragraphs (a) (1) through (9) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the City Hall in Dallas, Texas (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1126.44(a)(12) an amount equal to:

(i) 95 percent of the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1126.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1126.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b) (1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

[40 FR 23438, May 30, 1975, as amended at 47 FR 54422, Dec. 3, 1982; 50 FR 12766, April 1, 1985; 51 FR 44593, Dec. 11, 1986]

uncement of class prices.

administrator shall an-
y on or before the fifth
nonth the Class I price
ng month, the Class III
receding month and, for
fter the first month in
ection is effective, the
price for the preceding
or before the 15th day
n the tentative Class II
ollowing month.

ug. 28, 1981]

alent price.

eason a price or pricing
quired by this part for
ss prices or for other
t available as prescribed
ne market administrator
ce or pricing constituent
y the Secretary to be
the price or pricing con-
is required.

ts to handlers for trans-
lus milk.

the months of March
and December 16-31, a
credit shall be comput-
ndler on the amount of
that is classified as
Class III pursuant to
3) or (d)(2) that such
ers or diverts to nonpool
outside the State of
established pursuant to
and (b) of this section
uted at the rate of 2.4
dredweight for each 10
ction thereof, for the
-surfaced highway dis-
rmined by the market
The amount of milk eli-
ansportation credit and
such credit shall be es-
accordance with para-
, and (c) of this section
limitations specified in
of this section.
er credit shall apply to
lk products transferred
rom a pool plant located
the marketing area for
between the transferor
the transferee nonpool

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1-A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply.

[53 FR 39445, Oct. 7, 1988]

UNIFORM PRICE

§ 1126.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1126.9(b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1126.9(c) that were classified in each class pursuant to §§ 1126.43(a) and 1126.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1126.44(a)(14) and the corresponding step of § 1126.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1126.44(a)(9) and the corresponding step of § 1126.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7)(i) through (iv) and (vii) and the corresponding step of § 1126.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (v) and (vi) and the corresponding step of § 1126.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(11) and the corresponding step of § 1126.44(b), excluding su
skim milk and butterfat in receipts
bulk fluid milk products from an
regulated supply plant to the ext
that an equivalent amount of sk
milk or butterfat fully regulated un
any Federal milk order is classif
and priced as Class I milk and is
used as an offset for any other p
ment obligation under any order;

(g) Subtract for a handler describ
in § 1126.9(c) the amount obtain
from multiplying the Class III pr
for the preceding month, as adjus
by the butterfat differential specif
in § 1126.74, by the hundredweight
skim milk and butterfat contained
inventory at the beginning of
month that was delivered to anoth
handler's pool plant during
month.

(h) Deduct any credit applicable p
suant to § 1126.55.

[40 FR 23438, May 30, 1975, as amended
53 FR 39445, Oct. 7, 1988]

§ 1126.61 Computation of uniform p (including weighted average price).

For each month the market admin
trator shall compute the "unifo
price" (and "weighted average pric
per hundredweight for milk of 3.5 p
cent butterfat content at pool pla
at which no location adjustment
plies as follows:

(a) Combine into one total
values computed pursuant to § 1126
for all handlers who filed the repo
prescribed in § 1126.30 for the mon
and who made the payments pursua
to § 1126.71 for the preceding month

(b) Add not less than one-fourth
the unobligated balance in the prod
er-settlement fund;

(c) Add the aggregate of all min
location adjustments and subtract
aggregate of all plus location adju
ments pursuant to § 1126.75;

(d) Divide the resulting amount
the sum of the following for all h
dlers included in these computation

(1) The total hundredweight of p
ducer milk; and

(2) The total hundredweight
which a value is computed pursuant
§ 1126.60(f); and

(e) Subtract not more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) The weighted average price shall be the "uniform price" for milk received from producers.

[44 FR 18939, Mar. 30, 1979, as amended at 44 FR 53721, Sept. 17, 1979; 50 FR 12766, Apr. 1, 1985]

§ 1126.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1126.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit the payments made by handlers pursuant to §§ 1126.71, 1126.76, and 1126.77 and from which he shall make all payments pursuant to §§ 1126.73 (a) through (f) and 1126.77, except that payments to a cooperative association pursuant to § 1126.73(c) shall be offset by any payments due from such cooperative association pursuant to § 1126.1 that have not been received by the market administrator.

§ 1126.71 Payments to the producer-settlement fund.

(a) Subject to paragraphs (c) and (d) of this section, each handler shall pay to the market administrator on or before the 26th day of each month an amount determined by multiplying the handlers receipts during the first 18 days of such month of producer milk (excluding, in the case of a handler described in § 1126.9(c), producer milk delivered to a pool plant) and milk from a handler described in § 1126.9(c) by the Class III price for the preceding month, less:

(1) Payments made by the handler on or before such date to producers for milk received during the 18-day period; and

(2) Proper deductions authorized in writing by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value (at the Class III price) of the milk received from the producer during the 18-day period.

(b) Subject to paragraphs (c) and (d) of this section, each handler shall pay to the market administrator on or before the 16th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1126.60(a), as adjusted by the butterfat differential specified in § 1126.74, and pursuant to § 1126.60(b) through (g), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Payments, other than those specified in § 1126.73(d); that were made by the handler on or before such date to producers for milk received during such month;

(3) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value of the milk received from the producer during the month; and

(4) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value was computed pursuant to § 1126.60(f).

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or on any Monday that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(d) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1126.73(c).

(e) On or before the 25th day after the end of the month, each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (e)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[40 FR 23438, May 30, 1975, as amended at 44 FR 18939, Mar. 30, 1979]

§ 1126.72 [Reserved]

§ 1126.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the 28th day of each month for milk for which payment pursuant to § 1126.71(a) has been received by the market administrator. Such payment shall be at a rate per hundredweight equal to the Class III price for the preceding month less the amounts specified in § 1126.71(a)(1) and (2).

(b) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the 18th day after the end of each month for milk for which payment pursuant to § 1126.71(b) has been received by the market administrator or offset pursuant to § 1126.71(d). Such payment shall be at the uniform price computed pursuant to § 1126.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1126.74 and 1126.75;

(2) Less the payments described in § 1126.71(b)(2) and paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1126.86;

(4) Less the authorized deductions specified in § 1126.71(b)(3); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be ligible to participate in this payment rrangement until the handler has et all prescribed payment obligations r three consecutive months. In aking payments to producers pursu- nt to this paragraph, the handler all furnish each producer the fol- wing information:

(1) The identity of the handler and e producer and the month to which e payment applies;

(2) The total pounds and, with re- ect to final payments, the average tterfat content of the milk for hich payment is being made;

(3) The minimum rate of payment quired by the order and the rate of yment used if such rate is other an the applicable minimum rate;

(4) The amount and nature of any ductions from the amount otherwise e the producer; and

(5) The net amount of payment to e producer.

(e) The following conditions shall ply with respect to the payments escribed in paragraphs (a) through) of this section:

1) If the date by which such pay- nts are to be made falls on a Satur- y or Sunday or on any Monday that an national holiday, such payments ed not be made until the next day which the market administrator's ice is open for public business; and

2) If the application of 126.71(c)(2) or paragraph (e)(1) of s section results in a delay in the rtial or final payments by handlers the market administrator or by the rket administrator to handlers, the rresponding partial or final pay- nts prescribed in paragraphs (a) rough (d) of this section may be de- ved by the same number of days.

f) If the market administrator does t receive the full payment required a handler pursuant to § 1126.71, he all reduce uniformly per hundred- ight the payments due producers their milk received by such han- r by a total amount not in excess of e amount due from such handler. e market administrator shall com- te such payments on or before the xt date for making payments pursu- t to this section following the date which the remaining payment is re- ved from such handler.

(g) Subject to § 1126.71(c)(1) and (2), each handler who receives bulk fluid milk products from a pool plant operated by a cooperative association shall pay the following amounts for such milk to the market administrator, who in turn shall transmit such money to the cooperative association:

(1) On or before the 26th day of each month, an amount determined by multiplying such receipts during the first 18 days of the month by the Class III price for the preceding month. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1126.74 for the preceding month; and

(2) On or before the 16th day after the end of each month, an amount determined by mutiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1126.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1126.74, less any payment made by the handler pursuant to paragraph (g)(1) of this section for such month. For the purpose of such computation, the applicable Class I price shall be the higher of the Class I prices applicable at the transferee-plant and the transferor-plant.

[40 FR 23438, May 30, 1975, as amended at 44 FR 5868, Jan. 30, 1979]

§ 1126.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest reg. one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1126.75 Plant location adjustments for producers and on nonpool milk.

(a) In making the payments required pursuant to § 1126.73, the uniform price computed pursuant to § 1126.61 for the month shall be adjusted by the amounts set forth in § 1126.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computing the value of other source milk pursuant to § 1126.71, the weighted average price shall be adjusted by the amount set forth in § 1126.52 that is applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

[40 FR 23438, May 30, 1975, as amended at 44 FR 18939, Mar. 30, 1979]

§ 1126.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1126.30(b) and 1126.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partial regulated distributing plant;

(4) Multiply the remaining pound by the difference between the Class price and the weighted average pric both prices to be applicable at the lo cation of the partially regulated dis tributing plant (except that the Clas I price and the weighted average pric shall not be less than the Class II price); and

(5) Add the amount obtained from multiplying the pounds of reconstitut ed skim milk specified in paragraph (a)(3) of this section by the differenc between the Class I price applicable a the location of the partially regulated distributing plant (but not to be les than the Class III price) and the Cla III price.

(b) The payment under this para graph shall be the amount resultin from the following computations:

(1) Determine the value that woul have been computed pursuant t § 1126.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the fol lowing modifications:

(i) Fluid milk products and bul fluid cream products received at th partially regulated distributing plan from a pool plant or an other orde plant shall be allocated at the partia ly regulated distributing plant to th same class in which such produc were classified at the fully regulate plant;

(ii) Fluid milk products and bul fluid cream products transferred from the partially regulated distributin plant to a pool plant or an other orde plant shall be classified at the partia ly regulated distributing plant in th class to which allocated at the full regulated plant. Such transfers shal be allocated to the extent possible t those receipts at the partially regula ed distributing plant from pool plant and other order plants that are clas fied in the corresponding class pursu ant to paragraph (b)(1)(i) of this sec tion. Any such transfers remainin after the above allocation which ar classified in Class I and for which t value is computed for the handler op erating the partially regulated distrib uting plant pursuant to § 1126.60 shal be priced at the uniform price (or t he weighted average price if such is rovided) of the respective order regulating the handling of milk at the ransferee-plant, with such uniform rice adjusted to the location of the onpool plant (but not to be less than he lowest class price of the respective rder), except that transfers of reconstituted skim milk in filled milk shall e priced at the lowest class price of he respective order; and

(iii) If the operator of the partially egulated distributing plant so reuests, the value of milk determined ursuant to § 1126.60 for such handler hall include, in lieu of the value of ther source milk specified in 1126.60(f) less the value of such ther source milk specified in 1126.71(b)(4), a value of milk determined pursuant to § 1126.60 for each onpool plant that is not an other rder plant which serves as a supply lant for such partially regulated distributing plant by making shipments o the partially regulated distibuting lant during the month equivalent to he requirements of § 1126.7(b) and he corresponding provisions of 1126.7(d), subject to the following onditions:

(*a*) The operator of the partially regulated distributing plant submits with is reports filed pursuant to § 1126.30(b) and 1126.31(b) similar reports for each such nonpool supply lant;

(*b*) The operator of such nonpool upply plant maintains books and ecords showing the utilization of all kim milk and butterfat received at uch plant which are made available if equested by the market administrator or verification purposes; and

(c) The value of milk determined ursuant to § 1126.60 for such nonpool upply plant shall be determined in he same manner prescribed for computing the obligation of such partially egulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of his section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1126.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[40 FR 23438, May 30, 1975, as amended at 44 FR 18939, Mar. 30, 1979]

§ 1126.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next day for making payment set forth in the provision under which such error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler.

§ 1126.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1126.71, 1126.73(g), 1126.76, 1126.77, or 1126.85 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1126.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1126.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1126.9(c);

(c) Other source milk allocated to Class I pursuant to § 1126.44(a)(7) and (11) and the corresponding steps of § 1126.44(b), except such other source milk that is excluded from the computations pursuant to § 1126.60(d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1126.76(a)(2).

§ 1126.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1126.73, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. The monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 18th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each such producer.

PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as mended; 7 U.S.C. 601-674.

SOURCE: 39 FR 16084, May 7, 1974, unless therwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1131.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1131.2 Central Arizona marketing area.

"Central Arizona marketing area", hereinafter called the "marketing area", means all territory within the counties of Cochise, Graham, Greenlee, Maricopa, Pima, and Pinal, and that part of Yuma County south of 33 degrees latitude (North from the Equator), all in the State of Arizona.

§ 1131.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of a fluid milk product classified as Class I milk other than a delivery to a plant described in § 1131.7(a).

§§ 1131.4—1131.6 [Reserved]

§ 1131.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant approved by a duly constituted regulatory agency for the receipt or processing of Grade A milk or which supplies processed milk to an agency of the U.S. Government located within the marketing area, from which during the month:

(1) There is route disposition, except filled milk, equal to at least 50 percent of the total receipts at the plant (i) of milk qualified by inspection to become producer milk pursuant to § 1131.13(a), and (ii) from other milk plants and handlers described in § 1131.9(c) in the form of fluid milk products, except filled milk, qualified for fluid consumption; and

(2) There is route disposition, except filled milk, in the marketing area in a volume not less than 25 percent of such receipts and also greater than an average of 600 pounds per day.

(b) Any plant which ships fluid milk products except filled milk, approved by a duly constituted regulatory agency having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk (from dairy farmers who would be producers if this plant qualifies as a pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section. If a plant qualifies in each of the months of July through October in the manner prescribed in this section, such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

(c) A milk manufacturing plant located within the marketing area at which milk may be received from the farms of dairy farmers holding permits or authorization issued by a duly constituted regulatory agency having jurisdiction in the marketing area and which is operated by a cooperative association qualified under § 1131.18 which has 50 percent or more of its member producer milk (including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant) received at the pool plants of other handlers during the current month or the previous 12-month period ending with the current month. Milk received by such cooperative, in a truck owned or under contract to the cooperative, from a pool plant and transferred in such truck to another pool plant for the account of the cooperative shall be considered a receipt at the cooperative's plant and a transfer from such plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a m keting area where the handling milk is regulated pursuant to anoth order issued pursuant to the Act, a which is subject to the classificati and pricing provisions of such oth order; and

(3) Any plant qualified pursuant paragraph (b) of this section for a portion of the period Novemb through June, inclusive, that the m of producers at such plant is subject the classification and pricing pro sions of an other order issued pur ant to the Act and the Secretary termines that such plant should be empted from this part.

[39 FR 16084, May 7, 1974, as amended at FR 31234, July 25, 1975; 48 FR 52430, N 18, 1983]

§ 1131.8 Nonpool plant.

"Nonpool plant" means any milk filled milk receiving, manufacturi or processing plant other than a p plant. The following categories of n pool plants are further defined as f lows:

(a) "Other order plant" means plant that is fully subject to the pr ing and pooling provisions of anoth order issued pursuant to the Act.

(b) "Producer-handler plant" mea a plant operated by a producer-ha dler as defined in any order (includi this part) issued pursuant to the Act

(c) "Partially regulated distributi plant" means a nonpool plant that neither an other order plant nor a p ducer-handler plant, from which the is route disposition in consumer-ty packages in the marketing area duri the month.

(d) "Unregulated supply plan means a nonpool plant from whi fluid milk products are moved duri the month to a pool plant and whi is not an other order plant nor a p ducer-handler plant.

§ 1131.9 Handler.

"Handler" means:

(a) Any person in his capacity as t operator of a pool plant;

(b) A cooperative association with spect to milk of any producer whi such cooperative association causes be diverted pursuant to § 1131.13 for the account of such association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator in writing prior to the first day of the month in which such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1131.7(d).

[39 FR 16084, May 7, 1974, as amended at 40 FR 31234, July 25, 1975]

§ 1131.10 Producer-handler.

"Producer-handler" means:

(a) Any person who is both a dairy farmer and the operator of a plant from which fluid milk products are disposed of as route disposition in the marketing area and who:

(1) Receives at his plant, or acquires for route disposition fluid milk products only from:

(i) His own farm production; and

(ii) Fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) Does not reprocess or convert milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk product received;

(3) Furnishes proof satisfactory to the market administrator that:

(i) The maintenance, care, and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person in his capacity as a producer; and

(ii) The operation of such plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(b) The governmental agency that operates a milk plant, except that a plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant that is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for 1 month and thereafter resumes the status of a nonpool plant, it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk pursuant to the requirements specified in paragraph (a)(1) or (2) of this section, and whose milk is received directly from the farm at a pool plant or is diverted as producer milk pursuant to § 1131.13.

(1) Produces milk on a dairy farm subject to the regular inspection by a duly constituted regulatory agency under a dairy farm permit or rating issued by such agency for the production of milk to be disposed of for fluid consumption.

(2) Produces milk which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and

such milk is allocated to Class II or Class III utilization pursuant to § 1131.44(a)(8)(iii) and the corresponding step of § 1131.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

(4) Any person whose milk is received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant, unless 50 percent or more of the milk production from the same farm is producer milk under this part during the current month and each of the 2 immediately preceding months (or would have been producer milk in each of the 2 immediately preceding months except for the operation of this provision); *Provided*, That this provision shall not be applicable until the third month following the effective date of this amended order.

[39 FR 16084, May 7, 1974, as amended at 40 FR 31234, July 25, 1975; 48 FR 52430, Nov. 18, 1983]

§ 1131.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat produced by producers:

(a) With respect to receipts at a pool plant:

(1) Received directly from such producers; and

(2) Diverted from such pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to additional receipts of a cooperative association:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the limitations and conditions of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1131.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a)(2) and (b)(1) of this section:

(1) Such diversions may be without limit during the months of December through April, but shall not be for more than 8 days' production of any producer during any other month, otherwise only milk of such producer received at a pool plant shall be producer milk; and

(2) For purposes of location adjustments pursuant to §§ 1131.52 and 1131.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1131.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1131.40(b)(1) from any source other than producers, handlers described in § 1131.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1131.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1131.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1131.40(b)(1)) for which the handler fails to establish a disposition.

§ 1131.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that

e packaged in hermetically sealed ass or all-metal containers, any prod- t that contains by weight less than 5 percent nonfat milk solids, and ney; and

(2) The quantity of skim milk in any odified product specified in para- aph (a) of this section that is in cess of the quantity of skim milk in equal volume of an unmodified oduct of the same nature and but- rfat content.

FR 16084, May 7, 1974, as amended at 40 31945, July 30, 1975]

131.16 Fluid cream product.

"Fluid cream product" means cream her than plastic cream or frozen eam), sour cream, or a mixture (in- ding a cultured mixture) of cream d milk or skim milk containing 9 rcent or more butterfat, with or thout the addition of other ingredi- ts.

131.17 Filled milk.

"Filled milk" means any combina- n of nonmilk fat (or oil) with skim lk (whether fresh, cultured, recon- tuted, or modified by the addition nonfat milk solids), with or without lkfat, so that the product (including bilizers, emulsifiers, or flavoring) embles milk or any other fluid milk oduct, and contains less than 6 per- t nonmilk fat (or oil).

131.18 Cooperative association.

Cooperative association" means any operative association of producers ich the Secretary determines:

a) To be qualified under the provi- ns of the act of Congress of Febru- 18, 1922, as amended, known as "Capper-Volstead Act"; and

b) To have and to be exercising full thority in the sale of milk for its mbers.

131.19 [Reserved]

131.20 Product prices.

he following product prices shall used in calculating the basic Class formula price pursuant to 131.51a:

a) *Butter price.* "Butter price" ans the simple average, for the first days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-

day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

[46 FR 43403, Aug. 28, 1981]

§ 1131.21 Associated producer.

"Associated producer" is any person (other than a producer-handler or a dairy farmer for other markets), whose milk is received at a nonpool plant (except an other order plant) other than as a diversion by a handler from a pool plant subject to the following conditions:

(a) Fifty percent or more of the milk production from the same farm is producer milk under this part during the current month and each of the 2 immediately preceding months (or would have been producer milk in each of the 2 immediately preceding months except for the application of § 1131.12(b)(4));

(b) Milk produced on such farm must meet the requirements of § 1131.12(a)(1) or (2); and

(c) Such person shall certify in writing to the market administrator on or before the first day after each month in which his milk is not accepted or accounted for by a handler at a pool plant, that he will deliver his milk to
such pool plant and does so
upon request from the handler.

[48 FR 52430, Nov. 18, 1983]

§ 1131.22 Associated producer milk

"Associated producer milk"
the milk produced by an ass
producer that is not accepted
counted for by a handler at
plant and is diverted by the ass
producer to a nonpool plant (e
producer-handler plant or an
order plant) subject to the fo
conditions:

(a) Milk so diverted shall not
as associated producer milk unl
operator of the nonpool plant
tains books and records showi
utilization of all skim milk and
fat received at the plant whi
made available if requested
market administrator. Milk so d
shall qualify as associated p
milk to the extent such milk
for manufacturing purposes
nonpool plant (classified as C
milk, or Class II milk pursu
§ 1131.42(d)(2)(vi)).

(b) During the months o
through November the quantity
sociated producer milk receipts
pool plants from such farm sh
exceed 8 days' production le
number of days' production tha
verted by a handler from such
nonpool plants.

[48 FR 52430, Nov. 18, 1983]

HANDLER REPORTS

§ 1131.30 Reports of receipts and
tion.

On or before the seventh da
the end of each month, each h
shall report for such month
market administrator, in the
and on the forms prescribed
market administrator, as follows

(a) Each handler, with resp
each of his pool plants, shall
the quantities of skim milk and
fat contained in or represented

(1) Receipts of producer m
cluding producer milk diverted
handler from the pool plant to
plants;

(2) Receipts of milk from h
described in § 1131.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1131.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1131.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1131.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

(a) Each handler, except a producer-handler or a handler making payment pursuant to § 1131.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, the payments made to a cooperative association pursuant to § 1131.73(d);

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1131.13 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1131.30 and 1131.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

§ 1131.33 Associated producer reports.

Each associated producer, or a cooperative association on his behalf, shall submit in the manner prescribed by the market administrator:

(a) On or before the 7th day after each month, a statement of the quantity of milk which the associated producer diverted to nonpool plants (except a producer-handler plant or an other order plant) for use for manufacturing purposes in such month; and

(b) On or before the 10th day after each month, delivery receipts or other evidence satisfactory to the market administrator verifying the quantity of his milk sold for manufacturing purposes in such month.

[48 FR 52431, Nov. 18, 1983]

CLASSIFICATION OF MILK

§ 1131.40 Classes of utilization.

Except as provided in § 1131.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1131.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and —

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically seale
or all-metal containers.

(c) *Class III milk.* Class II
shall be all skim milk and butter

(1) Used to produce:

(i) Cheese (other than c
cheese, lowfat cottage cheese, a
curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry fo

(iv) Any concentrated milk p
in bulk, fluid form that is u
produce a Class III product;

(v) Evaporated or condense
(plain or sweetened) in a con
type package and evaporated o
densed skim milk (plain or swee
in a consumer-type package; and

(vi) Any product not otherwise
fied in this section;

(2) In inventory at the end
month of fluid milk products i
or packaged form and products
fied in paragraph (b)(1) of this s
in bulk form;

(3) In fluid milk products and
ucts specified in paragraph (b
this section that are disposed o
handler for animal feed;

(4) In fluid milk products and
ucts specified in paragraph (b
this section that are dumped by
dler if the market administrator
tified of such dumping in advan
is given the opportunity to verif
disposition;

(5) In skim milk in any mo
fluid milk product that is in exc
the quantity of skim milk in
product that was included with
fluid milk product definition pu
to § 1131.15; and

(6) In shrinkage assigned pu
to § 1131.41(a) to the receipts sp
in § 1131.41(a)(2) and in shri
specified in § 1131.41(b) and (c).

§ 1131.41 Shrinkage.

For purposes of classifying al
milk and butterfat to be reporte
handler pursuant to § 1131.3
market administrator shall dete
the following:

(a) The pro rata assignme
shrinkage of skim milk and but
respectively, at each pool plant
respective quantities of skim mi
butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1131.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6), of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1131.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1131.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1131.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1131.44(a)(7) or the corresponding step of § 1131.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1131.44(a)(11) or (12) or the corresponding steps of § 1131.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class for such month at the pool plant(s) of the receiving handler after the computations pursuant to § 1131.44(a)(13)(i) and the corresponding step of § 1131.44(b).

(b) *Transfers or diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3), of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be cla fied as Class II or Class III milk to extent of such utilization available such classification pursuant to the location provisions of the other or

(4) If information concerning classes to which such transfers or versions were allocated under other order is not available to market administrator for the pur of establishing classification un this paragraph, classification shall as Class I, subject to adjustment w such information is available;

(5) For purposes of this paragra if the other order provides for a dif ent number of classes of utilizat than is provided for under this p skim milk or butterfat allocated t class consisting primarily of fluid m products shall be classified as Cla milk, and skim milk or butterfat a cated to the other classes shall be c sified as Class III milk; and

(6) If the form in which any fl milk product that is transferred to other order plant is not defined a fluid milk product under such ot order, classification under this pa graph shall be in accordance with provisions of § 1131.40.

(c) *Transfers to producer-handl* Skim milk or butterfat transferred the following forms from a pool pl to a producer-handler under this any other Federal order shall be cla fied:

(1) As Class I milk, if transferred the form of a fluid milk product;

(2) In accordance with the util tion assigned to it by the market ministrator, if transferred in the fo of a bulk fluid cream product. For purpose, the producer-handler's u zation of skim milk and butterfat each class, in series beginning w Class III, shall be assigned to extent possible to his receipts of sk milk and butterfat, respectively, bulk fluid cream products, pro rata each source.

(d) *Transfers and diversions to ot nonpool plants.* Skim milk or butter transferred or diverted in the foll ing forms from a pool plant to a n pool plant that is not another or plant or a producer-handler pl shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1131.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products received at the nonpool plant pursuant to § 1131.22 or from pool plants and other order plants shall be assigned, pro rata among such sources of milk, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

[39 FR 16084, May 7, 1974, as amended at 48 FR 52431, Nov. 18, 1983]

§ 1131.43 General classification rules.

In determining the classification of producer milk pursuant to § 1131.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1131.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1131.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1131.40, 1131.41, and 1131.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1131.9(b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1131.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1131.9(a) for each of his pool plants separately and of each handler described in § 1131.9(b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1131.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month.

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1131.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series be-

ginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1131.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(vii) Receipts of milk from a dairy farmer pursuant to § 1131.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a) (2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1131.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in

series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1131.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk poducts from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim mil to be subtracted from Class I pursuan to this paragraph exceed the pound of skim milk remaining in such clas the pounds of skim milk in Class shall be increased by an amount equa to such excess quantity to be subtracted, and the pounds of skim milk i Class II and Class III combined shal be decreased by a like amount (decreasing as necessary Class III an then Class II). In such case, th pounds of skim milk remaining in eac class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by like amount, beginning with the nearest plant at which Class I utilization i available;

(12) Subtract in the manner spec fied below from the pounds of skin milk remaining in each class th pounds of skim milk in receipts of bul fluid milk products from an othe order plant that are in excess of bul fluid milk products transferred or diverted to such plant and that were no subtracted pursuant to paragraphs (a (7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of par graphs (a)(12) (ii), (iii), and (iv) of thi section, such subtraction shall be pr rata to the pounds of skim milk i Class I and in Class II and Class II combined, with the quantity prorate to Class II and Class III combine being subtracted first from Class I and then from Class II, with respect t whichever of the following quantitie represents the lower proportion o Class I milk:

(*a*) The estimated utilization of skir milk of all handlers in each class a announced for the month pursuant t § 1131.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocatio step at all pool plants of the handle (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant t paragraph (a)(12)(i) of this sectio result in the total pounds of skim mil at all pool plants of the handler tha are to be subtracted at this allocatio step from Class II and Class III combined exceeding the pounds of ski milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) and (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraphs (a)(12) (i) and (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the following order from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1131.9(c) according to the classification of such products pursuant to § 1131.42(a); and

(ii) A cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) according to the classification of such products pursuant to § 1131.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

[39 FR 16084, May 7, 1974, as amended at 48 FR 52431, Nov. 18, 1983]

§ 1131.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1131.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1131.50 Class prices.

Subject to the provisions of § 1131.52, the class prices for the months per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.52.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to §1131.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1131.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 16084, May 7, 1974, as amended at 40 FR 6321, Feb. 11, 1975; 45 FR 65514, Oct. 3, 1980; 46 FR 43403, Aug. 28, 1981; 51 FR 12834, Apr. 16, 1986]

§ 1131.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1131.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1131.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1131.20 and yield factors in effect under the

Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

Note: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

Note: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43403, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1131.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside Pima County and more than 30 miles by shortest highway distance as measured by the market administrator, from the nearer of the Courthouses in Maricopa and Graham Counties, Ariz., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1131.50(a) shall be reduced by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1131.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under § 1131.50(a) shall be increased 12 cents.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43404, Aug. 28, 1981]

§ 1131.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1131.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month
the value of milk of each handler wit
respect to each of his pool plants an
of each handler described in § 1131.
(b) and (c) as follows:

(a) Multiply the pounds of produce
milk in each class as determined pu
suant to § 1131.44 by the applicabl
class prices and add the resultin
amounts;

(b) Add the amounts obtained fro
multiplying the pounds of overag
subtracted from each class pursuant t
§ 1131.44(a)(14) and the correspondin
step of § 1131.44(b) by the respecti
class prices, as adjusted by the butte
fat differential specified in § 1131.7
that are applicable at the location o
the pool plant;

(c) Add the following:

(1) The amount obtained from mu
tiplying the difference between th
Class III price for the precedin
month and the Class I price applicabl
at the location of the pool plant fo
the current month by the hundre
weight of skim milk and butterfat su
tracted from Class I pursuant t
§ 1131.44(a)(9) and the correspondin
step of § 1131.44(b); and

(2) The amount obtained from mu
tiplying the difference between th
Class III price for the precedin
month and the Class II price for th
current month by the lesser of:

(i) The hundredweight of skim mil
and butterfat subtracted from Class
pursuant to § 1131.44(a)(9) and th
corresponding step of § 1131.44(b) fo
the current month; or

(ii) The hundred weight of skim mil
and butterfat remaining in Class I
after the computations pursuant
§ 1131.44(a)(12) and the correspondin
step of § 1131.44(b) for the precedin
month, less the hundredweight
skim milk and butterfat specified
paragraph (c)(1) of this section:

(d) Add the amount obtained fro
multiplying the difference betwe
the Class I price applicable at the loc
tion of the pool plant and the Class I
price by the hundredweight of ski
milk and butterfat subtracted fro
Class I pursuant to § 1131.44(a)(7)
through (iv) and (vii) and the cor
sponding step of § 1131.44(b), exclu
ing receipts of bulk fluid cream pro
ucts from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (v) and (vi) and the corresponding step of § 1131.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(11) and the corresponding step of § 1131.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

[39 FR 16084, May 7, 1974, as amended at 48 FR 52431, Nov. 18, 1983]

§ 1131.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1131.60 for all handlers who filed the reports prescribed by § 1131.30 for the month and who made the payments pursuant to §§ 1131.71 and 1131.73 for the preceding month;

(b) Add an amount equal to the value of the associated producer milk for the month at the Class III price for milk of 3.5 percent butterfat content;

(c) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight of associated producer milk; and

(3) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

[48 FR 52431, Nov. 18, 1983]

§ 1131.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1131.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1131.71 and 1131.76 and out of which he shall make all payments pursuant to § 1131.72: *Provided,* That payments due to any handler shall be offset by any payments due from such handler.

§ 1131.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1131.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1131.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1131.72 Payments for the producer-settlement fund.

(a) On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(a)(2) exceeds and amount computed to § 1131.71(a)(1).

(b) On or before the 15th day after the end of each month the market administrator shall make payment to each associated producer, or to a cooperative association on his behalf, an amount obtained by multiplying the quantity of associated producer milk of such associated producer for the month by the difference between the uniform price and the Class III price. Any over-payment to an associated producer may be offset by a payment reduction to such associated producer from the market administrator in the following month or, shall be remitted by such associated producer to the producer-settlement fund on or before the next date for making payments under this provision.

(c) If the balance in the producer-settlement fund is insufficient to make all payments pursuant to paragraph (a) of this section the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

[48 FR 52431, Nov. 18, 1983]

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount not less than 1.3 times the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price as adjusted pursuant to §§ 1131.74 and 1131.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions made for marketing services pursuant to § 1131.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1131.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the seventh day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount or rate and nature of any authorized deductions to be made from payments, and (iii) the amount and nature of payments due pursuant to § 1131.77; and

(d) Each handler who receives milk from a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received from such cooperative association during the first 15 days of the month at not less than 1.3 times the Class III price for the preceding month; and

(2) In final settlement, the value of such milk as classified pursuant to § 1131.44 at the class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to paragraph (d)(1) of this section.

§ 1131.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1131.52; and

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price shall not be less than the Class III price.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to

§§ 1131.30(b) and 1131.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1131.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1131.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1131.60 for such handler shall include, in lieu of the value of other source milk specified in § 1131.60(f) less the value of such other source milk specified in § 1131.71(a)(2)(ii), a value of milk determined pursuant to § 1131.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of

§ 1131.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1131.30(b) and 1131.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1131.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1131.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1131.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payment by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1131.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred. Such adjustments shall apply in the same manner with respect to an associated producer.:

[48 FR 52431, Nov. 18, 1983]

§ 1131.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1131.71 or § 1131.77 relative to payments to the producer-settlement fund shall be increased one-half of 1 percent on the second day following the due date of such obligation and on the 15th day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1131.85 Assessment for order administration.

(a) As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(1) Producer milk (including such handler's own production);

(2) Other source milk allocated to Class I pursuant to § 1131.44(a) (7) and (11) and the corresponding steps of § 1131.44(b), except such other source milk that is excluded from the computations pursuant to § 1131.60 (d) and (f); and

(3) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1131.76(a)(2).

(b) The market administrator shall deduct the same rate per hundredweight prescribed in paragraph (a) of this section from payments to associated producers pursuant to § 1131.72(b) to cover each such associated producer's pro rata share of the expense of administration of the order.

[48 FR 52431, Nov. 18, 1983]

§ 1131.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1131.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1132.85 Assessment for order administration.
1132.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 39 FR 16094, May 7, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1132.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas.

[47 FR 54422, Dec. 3, 1982]

§§ 1132.3—1132.4 [Reserved]

§ 1132.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1132.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.7(a).

§ 1132.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk;

(1) Not less than 50 percent of the Grade A milk received at such plant from dairy farmers, from handlers described in § 1132.9(c), and from other plants, is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants); and

(2) Not less than 15 percent of such receipts, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from handlers described in § 1132.9(c) during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the marketing administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless notwithstanding the provisions of this paragraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1132.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1132.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers which is diverted pursuant to § 1132.13 for the account of such association;

(c) Any cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association or under control of such association, by contract or otherwise, in such a way that the association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

Any person who operates an
order plant described in
7(c).

0 Producer-handler.

ducer-handler" means any
who operates a dairy farm and
ibuting plant but who receives
k from other dairy farmers and
sposes of no fluid milk products
ess of his own milk production
iid milk products received from
ants.

1 [Reserved]

2 Producer.

xcept as provided in paragraph
this section, "producer" means
rson who produces milk in com-
with Grade A inspection re-
ents of a duly constituted
authority, which milk is (1) re-
at a pool plant, or (2) diverted
nt to § 1132.13.
Producer" shall not include:
producer-handler as defined in
der (including this part) issued
nt to the Act;
ny person with respect to milk
ed by him which is diverted to a
ant from another order plant if
er order designates such person
roducer under that order and
ilk is allocated to Class II or
III utilization pursuant to
44(a)(8)(iii) and the correspond-
of § 1132.44(b); and
ny person with respect to milk
ed by him which is reported as
d to another order plant if any
of such person's milk so moved
ned to Class I under the provi-
f such other order.

3 Producer milk.

ducer milk" means the skim
d butterfat in milk from a pro-
hat is handled by a pool plant
or or a handler described in
(b) and (c) as follows:
roducer milk of a handler oper-
pool plant is skim milk and
at in milk:
iverted by the operator of such
ant for his account to a nonpool
hat is not a producer-handler
subject to the limits prescribed
graph (d) of this section; and

(2) Received at such pool plant directly from producers and from a handler described in § 1132.9(c). If the handler to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the entire truckload shall be considered a receipt of producer milk at the first plant of delivery.

(b) Producer milk of a handler described in § 1132.9(b) is skim milk and butterfat in milk received by such handler from producers' farms and diverted by such handler for its account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section.

(c) Producer milk of a handler described in § 1132.9(c) is skim milk and butterfat in milk received by such handler from producers' farms in excess of the quantity delivered to pool plants. Such milk shall be priced to such handler at the location of the pool plant to which most of the milk in the tank truck was delivered during the month.

(d) Diverted milk is producer milk in any month only to the extent it meets conditions set forth in this paragraph:

(1) It is claimed as producer milk by the diverting handler in his report filed pursuant to § 1132.30;

(2) It is milk received from a dairy farmer who had producer status immediately prior to such diversion;

(3) It is not in excess of 15 days' production of each producer during any of the months July through February; and

(4) Such diverted producer milk shall be priced at the location of the pool plant where the producer's milk was last physically received.

§ 1132.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1132.40(b)(1) from any source other than producers, handler described in § 1132.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1132.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1132.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1132.40(b)(1) for which the handler fails to establish a disposition.

§ 1132.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 16094, May 7, 1974, as amended at 40 FR 31945, July 30, 1975]

§ 1132.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1132.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified, by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring, resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1132.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1132.19 [Reserved]

§ 1132.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1132.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

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(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43404, Aug. 28, 1981]

HANDLER REPORTS

§ 1132.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1132.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1132.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition of fluid milk products in the marketing area.

(c) Each handler described in § 1132.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1132.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1132.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1132.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1132.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1132.30 and 1132.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1132.40 Classes of utilization.

Except as provided in § 1132.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1132.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1132.15; and

(6) In shrinkage assigned pursuant to § 1132.41(a) to the receipts specified in § 1132.41(a)(2) and in shrinkage specified in § 1132.41 (b) and (c).

§ 1132.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1132.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1132.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1132.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk

fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1132.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1132.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1132.44(a)(7) or the corresponding step of § 1132.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1132.44(a) (11) or (12) or the corresponding steps of § 1132.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for

such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1132.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1132.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1132.43 General classification rules.

In determining the classification of producer milk pursuant to § 1132.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1132.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1132.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1132.40, 1132.41, and 1132.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1132.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1132.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1132.9(a) for each of his pool plants separately and of each handler described in § 1132.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1132.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk dis-

posed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtacted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1132.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1132.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined.

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1132.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1132.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1132.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1132.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classifications:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1132.44 on the basis of such report and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

CLASS PRICES

§ 1132.50 Class prices.

Subject to the provisions of § 1132.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.49.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1132.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (round to the nearest cent) of the basic Class II formula prices computed pursuant to § 1132.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 16094, May 7, 1974, as amended at 40 FR 6322, Feb. 11, 1975; 45 FR 65514, Oct. 3, 1980; 46 FR 43404, Aug. 28, 1981; 51 FR 12834, Apr. 16, 1986]

§1132.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92S-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§1132.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to §1132.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1132.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used in the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service

of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43405, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1132.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers at a pool plant located 100 miles or more from the city hall, Amarillo, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to paragraph (b) of this section, or otherwise classified as Class I milk, the price specified in § 1132.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

Distance from the Amarillo City Hall (miles)	Rate per hundredweight (cents)
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1132.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43405, Aug. 28, 1981]

§ 1132.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1132.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1132.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1132.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1132.44(a)(14) and the corresponding step of § 1132.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1132.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1132.44(a)(9) and the corresponding step of § 1132.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7) (i) through (iv) and the corresponding step of § 1132.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7) (v) and (vi) and the corresponding step of § 1132.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(11) and the corresponding step of § 1132.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1132.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") for all milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the city hall of Amarillo, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(c) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1132.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "weighted average price."

(f) The weighted average price shall be the "uniform price" for milk received from producers.

[44 FR 18950, Mar. 30, 1979, as amended at 44 FR 53721, Sept. 17, 1979]

§ 1132.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1132.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.71, 1132.76, and 1132.77, and from which he shall make all payments pursuant to §§ 1132.72 and 1132.77: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

§ 1132.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1132.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1132.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1132.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which is allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

[39 FR 16094, May 7, 1974, as amended at 44 FR 18950, Mar. 30, 1979]

§ 1132.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1132.71(a)(2) exceeds the amount computed pursuant to § 1132.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1132.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1132.61, subject to the butterfat differential computed pursuant to § 1132.74, and plus or minus adjustments for errors made in previous payments to such producer; and less:

(1) Payment made pursuant to paragraph (a) of this section,

(2) Location adjustments pursuant to § 1132.75,

(3) Deductions for marketing services pursuant to § 1132.86, and

(4) Proper deductions authorized by such producer: *Provided*, That if such handler has not received full payment for such month pursuant to § 1132.72 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The han-

dler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 26th and 13th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to paragraph (c)(1) of this section shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(4) For producer milk received from a handler described in § 1132.9(c), each handler shall make payments as follows:

(i) On or before the 26th day of the month, a partial payment for milk received during the first 15 days of such month at not less than the amount specified in paragraph (a) of this section; and

(ii) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform prices as adjusted pursuant to §§ 1132.74 and 1132.75, less the amount of payment made pursuant to paragraph (c)(4)(i) of this section.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1132.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from

3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1132.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment pursuant to § 1132.73 the uniform price pursuant to § 1132.61 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles)	Rate per hundred-weight (cents)
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the weighted average price shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the Class III price).

[39 FR 16094, May 7, 1974, as amended at 44 FR 18950, Mar. 30, 1979]

§ 1132.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1132.30(b) and 1132.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1132.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1132.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1132.60 for such handler shall include, in lieu of the value of other source milk specified in § 1132.60(f) less the value of such other source milk specified in § 1132.71(a)(2)(ii), a value of milk determined pursuant to § 1132.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1132.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1132.30(b) and 1132.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1132.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1132.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1132.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[39 FR 16094, May 7, 1974, as amended at 44 FR 18950, Mar. 30, 1979]

§ 1132.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1132.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1132.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1132.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1132.78 Charges on overdue accounts.

There shall be added to any balance due the market administrator pursuant to §§ 1132.71, 1132.76, 1132.77, 1132.85, and 1132.86 an amount equal to one-half of 1 percent of such balance for each month or any portion thereof that payment of the balance is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1132.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1132.44(a) (7) and (11) and the corresponding steps of § 1132.44(b), except such other source milk that is excluded from the computations pursuant to § 1132.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1032.76(a)(2).

§ 1132.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.73(b) shall deduct cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1134.85 Assessment for order administration.
1134.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).

SOURCE: 47 FR 42991, Sept. 30, 1982, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1134.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1134.2 Western Colorado marketing area.

"Western Colorado marketing area", hereinafter called the "marketing area", means all the territory within the outer boundaries of the following counties in the State of Colorado:

Delta, Garfield, Mesa, Montrose.

§ 1134.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a delivery in bulk to a nonpool plant.

§ 1134.4 [Reserved]

§ 1134.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are pasteurized or packaged and from which there is route disposition of Grade A fluid milk products in the marketing area.

§ 1134.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a pool distributing plant.

§ 1134.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk; and

(2) Ten percent or more of such receipts, or 2,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved in the form of fluid milk products, except filled milk, to distributing pool plants. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August, unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any of the following months of March through August unless it fulfills the shipping requirements of this paragraph for such month(s).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) of this section and there is more route disposition (except filled milk) in this marketing area than in the marketing area defined under such other order;

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of March through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act; and

(4) Any distributing plant from which there is less than an average of 200 pounds of route disposition per day, except filled milk, in the marketing area during the month.

§ 1134.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1134.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to § 1134.12;

(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by the association or by a hauler under contract to the association;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1134.7(c); and

(g) A vendor (any person who does not operate a plant described in paragraph (a), (d), (e) or (f) of this section but who engages in the business of receiving fluid milk products for resale and distributes to retail and wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from such a plant).

§ 1134.10 Producer-handler.

"Producer-handler" means any person who is an individual, partnership or corporation and who meets all the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by him in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is his sole risk and under his complete and exclusive management and control;

(2) Each such farm is owned or operated by him, at his sole risk, and under his complete and exclusive management and control; and

(3) Only he and no other person (except a member of his immediate family, or a stockholder in the case of a corporate farm) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and from which thee is route disposition during the month in the marketing area: *Provided*, That:

(1) No fluid milk products are received at such plant or by him at any other location except:

(i) From dairy farm(s) as specified in paragraph (a) of this section; and

(ii) From pool plants or other order plants in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of his Class I sales during the month;

(2) Such plant is operated under his complete and exclusive management and control and at his sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by him or by any person (including the operator of a plant, or a vendor) who controls or is controlled by him (e.g., as an interlocking stockholder) or in which he (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at his plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that represented by nonfat solids used in the fortification of fluid milk products) as Class I milk.

§ 1134.11 [Reserved]

§ 1134.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements for fluid consumption of a duly constituted health authority, whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in paragraphs (a) (1) and (2) of this section:

(1) A cooperative association may divert for its account the milk of any member-producer from whom not less than 3 days' production was received during the month at a distributing pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of March, April, May, June, July, and August and 30 percent in other months of its member-producer milk received at pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed a request in writing with the market administrator on or before the first day of the month the

agreement is effective. Such request shall specify the basis for assigning overdiverted milk to the producer-members of each cooperative association, at a time and in a manner approved by the market administrator.

(2) A handler may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section, from whom not less than 3 days' production was received during the month at the pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of March, April, May, June, July, and August and 30 percent in other months of the milk received at such distributing pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(1) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler, at a time and in a manner approved by the market administrator, shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purpose of the requirements of § 1134.7, milk diverted for the account of the operator of a distributing pool plant, except an operator who is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purpose of location adjustments pursuant to §§ 1134.52 and 1134.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1134.44(a)(8)(iii) and the corresponding step of § 1134.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1134.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to § 1134.60:

(1) Received directly from such producer; and

(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in § 1134.12;

(b) With respect to the additional receipts of a cooperative association:

(1) For which the cooperative association is the handler pursuant to § 1134.9(b), subject to the limitations and conditions provided in § 1134.12; and

(2) For which the cooperative association is the handler pursuant to § 1134.9(c). If the milk received at a pool plant from a handler described in § 1134.9(c) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1134.9(c) at the location of the pool plant.

§ 1134.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1134.40(b)(1) from any source other than producers, handlers described in § 1134.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1134.40(b)(1);

(c) Products (other than fluid milk products, products specified in

§ 1134.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1134.40(b)(1)) for which the handler fails to establish a disposition.

§ 1134.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1134.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent of more butterfat, with or without the addition of other ingredients.

§ 1134.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1134.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of, or marketing milk or its products for its members; and (c) Has its entire activities under the control of its members.

§ 1134.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1134.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, detemine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Divisions, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

HANDLER REPORTS

§ 1134.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1134.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1134.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1134.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1134.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in § 1134.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1134.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1134.32 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in § 1134.9(a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(1) The name of the plant to which diverted;

(2) The name of the individual dairy farmers so diverted;

(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.

(b) In addition to the reports required pursuant to §§ 1134.30 and 1134.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1134.40 Classes of utilization.

Except as provided in § 1134.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1134.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1134.15; and

(6) In shrinkage assigned pursuant to § 1134.41(a) to the receipts specified in § 1134.41(a)(2) and in shrinkage specified in § 1134.41 (b) and (c).

§ 1134.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1134.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section, the maximum pounds computed pursuant to such paragraph divided by 0.02; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1134.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the slim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the slim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1134.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determine from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1134.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Except as provided in paragraph (e) of this section, skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The slim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1134.44(a)(12) and the corresponding step of § 1134.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1134.44(a)(7) or the corresponding step of § 1134.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1134.44(a) (11) or (12) or the corresponding steps of § 1134.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part,

skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1134.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1134.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packag fluid milk products at such nonpo plant from pool plants;

(*b*) Pro rata to any remaining un signed receipts of packaged fluid mi products at such nonpool plant fr other order plants;

(*c*) Pro rata to receipts of bulk fl milk products at such nonpool pl from pool plants; and

(*d*) Pro rata to any remaining un signed receipts of bulk fluid milk pr ucts at such nonpool plant from ot order plants;

(iii) Any remaining Class I disp tion of packaged fluid milk prod from the nonpool plant shall be signed to the extent possible pro r to any remaining unassigned rece of packaged fluid milk products such nonpool plant from pool pl and other order plants;

(iv) Transfers of bulk fluid products from the nonpool plant plant fully regulated under any Fe al milk order, to the extent that transfers to the regulated plant ex receipts of fluid milk products such plant and are allocated to Cl at the transferee-plant, shall be signed to the extent possible in following sequence:

(*a*) Pro rata to receipts of fluid products at such nonpool plant pool plants; and

(*b*) Pro rata to any remaining signed receipts of fluid milk pro at such nonpool plant from order plants;

(v) Any remaining unassigned I disposition from the nonpool shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be asigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants hall be assigned, pro rata among such lants, to the extent possible first to ny remaining Class III utilization, hen to any remaining Class II utilizaion, and then to Class I utilization at uch nonpool plant; and

(viii) In determining the nonpool lant's utilization for purposes of this ubparagraph, any fluid milk products nd bulk fluid cream products transerred from such nonpool plant to a lant not fully regulated under any ederal milk order shall be classified n the basis of the second plant's utiliation using the same assignment pririties at the second plant that are set rth in this paragraph.

(e) *Transfers by a cooperative assoation to pool plants.* Skim milk and tterfat transferred in the form of lk milk by a handler described in 134.9(c) and from a pool plant opered by a cooperative association to other handler's pool plant shall be ssified pursuant to § 1134.44 pro a with producer milk received at e transferee-plant and the value reof at the class prices shall be inded in his value of milk pursuant to 134.60.

§ 1134.43 General classification rules.

In determining the classification of producer milk pursuant to § 1134.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1134.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1134.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1134.40, 1134.41, and 1134.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1134.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1134.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1134.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1134.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of § 1134.42(e) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1134.41(b);

pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1134.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1134.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk subject to the provisions of § 1134.42(e), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk subject to the provisions of § 1134.42(e) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1134.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1134.44(a)(12) and the corresponding step of § 1134.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1134.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant, the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1134.50 Class prices.

Subject to the provisions of § 1134.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.00.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1134.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in para-

graph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1134.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[47 FR 42991, Sept. 30, 1982, as amended at 51 FR 12834, Apr. 16, 1986]

§ 1134.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1134.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1134.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1134.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the
Price Support Program for chedd
cheese;

(ii) Multiply the butter price by t
yield factor used under the Price Su
port Program for determining the bu
terfat component of the whey value
the cheese price computation; and

(iii) Subtract from the edible wh
price the processing cost used und
the Price Support Program for edib
whey and multiply any positive diffe
ence by the yield factor used und
the Price Support Program for edib
whey.

(2) The gross value of milk used
manufacture butter-nonfat dry mi
shall be the sum of the following com
putations:

(i) Multiply the butter price by th
yield factor used under the Price Su
port Program for butter; and

(ii) Multiply the nonfat dry mi
price by the yield factor used und
the Price Support Program for nonf
dry milk.

(b) Determine the amounts by whic
the gross value per hundredweight
milk used to manufacture chedd
cheese and the gross value per hu
dredweight of milk used to manufa
ture butter-nonfat dry milk for th
first 15 days of the preceding mont
exceed or are less than the respecti
gross values for the first 15 days of th
second preceding month.

(c) Compute weighting factors to
applied to the changes in gross valu
determined pursuant to paragraph (
of this section by determining the re
ative proportion that the data inclu
ed in each of the following subpar
graphs is of the total of the data re
resented in paragraphs (c)(1) and (
of this section:

(1) Combine the total Americ
cheese production for the States
Minnesota and Wisconsin, as reporte
by the Statistical Reporting Service
the Department for the most rece
preceding period, and divide by th
yield factor used under the Price Su
port Program for cheddar cheese
determine the quantity of milk used
the production of American chedd
cheese; and

(2) Combine the total nonfat d
milk production for the States of Mi
nesota and Wisconsin, as reported
the Statistical Reporting Service

the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1134.52 Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in § 1134.9(c) at a pool plant, located more than 100 miles by shortest highway distance as measured by the market administrator, from the courthouse in Grand Junction, Colorado, and which is classified as Class I milk or assigned Class I location adjustment credit under paragraph (b) of this section, the price computed pursuant to § 1134.50(a) shall be reduced by 15 cents if such plant is located more than 100 miles but not more than 110 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1134.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1134.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1134.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1134.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1134.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk subject to the provisions of § 1134.42(e) that were classified in each class pursuant to §§ 1134.43(a) and 1134.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1134.44(a)(14) and the corresponding step of § 1134.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1134.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1134.44(a)(9) and the corresponding step of § 1134.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1134.44(a)(7) (i) through (iv) and the corresponding step of § 1134.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1134.44(a)(7) (v) and (vi) and the corresponding step of § 1134.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated suppy plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1134.44(a)(11) and the corresponding step of § 1134.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from mulitplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1134.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1134.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1134.60 for all handlers who filed the reports prescribed in § 1134.30 for the month and who made the payments pursuant to §§ 1134.71 and 1134.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1134.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1134.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1134.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1134.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1134.71, 1134.76, and 1134.77, subject to the provision of § 1134.78 and

t of which he shall make all pay-
ents pursuant to §§ 1134.72 and
34.77: *Provided*, That any payments
e to any handler shall be offset by
y payments due from such handler.

134.71 Payments to the producer-settlement fund.

a) On or before the 13th day after
e end of the month, each handler
all pay to the market administrator
e amount, if any, by which the total
ount specified in paragraph (a)(1)
this section exceeds the amount
ecified in paragraph (a)(2) of this
tion:

1) The total value of milk of the
ndler for such month as determined
rsuant to § 1134.60.

2) The sum of:

i) The value at the uniform price, as
justed pursuant to § 1134.75, of such
ndler's receipts of producer milk
d milk subject to the provisions of
134.42(e). In the case of a coopera-
e association which is a handler,
s the amount due from other han-
rs pursuant to § 1134.73(a), exclu-
e of differential butterfat values;
d

ii) The value at the uniform price
plicable at the location of the plant
m which received (not to be less
an the Class III price) of other
rce milk for which a value is com-
ted pursuant to § 1134.60(f).

b) On or before the 25th day after
end of the month each person who
erated an order plant that was regu-
ed during such month under an
ler providing for individual-handler
oling shall pay to the market ad-
nistrator an amount computed as
lows:

1) Determine the quantity of recon-
uted skim milk in filled milk in
ite disposition from such plant in
marketing area which was allocat-
to Class I at such plant. If there is
h route disposition from such plant
marketing areas regulated by two or
re marketwide pool orders, the re-
stituted skim milk allocated to
ss I shall be prorated to each order
ording to such route disposition in
h marketing area; and

2) Compute the value of the recon-
uted skim milk assigned in para-
ph (b)(1) of this section to route
disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable to the location of the other order plant (but not to be less than the Class III price) and the Class III price.

(c) Each vendor shall pay the market administrator on or before the 25th day after the end of the month at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to the following conditions:

(1) The quantities of skim and butterfat milk products on which payment shall be made pursuant to this section shall not exceed the vendor's Class I disposition in the marketing during the month; and

(2) This section shall not apply to a vendor whose total Class I disposition is obtained from a producer-handler, or whose total receipts and disposition of fluid milk products are considered as a part of the receipts and disposition of the producer-handler pursuant to § 1134.10(b)(3).

§ 1134.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1134.71(a)(2) exceeds the amount computed pursuant to § 1134.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1134.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(a) Not later than the last day of the month, to each producer from whom he received milk during the first 18 days of the month, a partial payment for the milk received during the first 15 days of the month, at the Class III price for the preceding month.

(b) Not later than the 16th day of the month, for milk received during the preceding month, an amount computed at not less than the uniform price, per hundredweight, pursuant to § 1134.61, as adjusted by the butterfat differential specified in § 1134.74, location adjustment specified in § 1134.75 and adjustments for errors made in previous payments minus:

(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to § 1134.86; and

(3) Deductions approved by the market administrator and authorized in writing by the producer. If the handler has not received full payment for the delivery period from the market administrator pursuant to § 1134.72, he may reduce his total payments to all producers uniformly by the amount owing to him by the market administrator. The handler shall, however, complete all payments not later than the 16th day of the month following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim by the cooperative association, each handler shall pay to the cooperative association on or before the second day preceding the dates set out in paragraphs (a) and (b) of this section an amount equal to the sum of the individual payments otherwise payable to the producer members of such organization. This payment shall be made for all milk of such producer certified by the cooperative association as a member, beginning the first day of the month following receipt of the certification and ending the last day of the month next preceding the date on which a written notice from the cooperative association terminating the membership was received.

(2) A copy of the request for payment, promise to reimburse, and certified list of members, shall be filed simultaneously with the market administrator. He may verify the information by auditing the records of the cooperative association. Exceptions to the accuracy of the membership certification, by a producer or by a handler, shall be made in writing to the market administrator for his determination.

(d) In making the payments to producers under paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk, a supporting statement which shall show for each month;

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required under this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) For milk received from a pool plant operated by a cooperative association or from a handler described in § 1134.9(c), each handler shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) A final settlement equal to the value of such milk at the uniform price, as adjusted pursuant to §§ 1134.74 and 1134.75, less payment made pursuant to paragraph (e)(1) of this section.

§ 1134.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1134.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from a pool plant operated by a cooperative association, and from a handler described in § 1134.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which diverted, each at the rates set forth in § 1134.52; and

(b) For purposes of computations pursuant to §§ 1134.71 and 1134.72 the uniform price shall be adjusted at the rates set forth in § 1134.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1134.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1134.30(b) and 1134.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1134.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1134.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1134.60 for such handler shall include, in lieu of the value of other source milk specified in § 1134.60(f) less the value of such other source milk specified in § 1134.71(a)(2)(ii), a value of milk determined pursuant to § 1134.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1134.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1134.30(b) and 1134.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1134.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1134.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1134.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1134.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1134.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1134.71, 1134.76, 1134.77, 1134.85 and 1134.86 shall be increased 1 percent for each month or portion thereof beginning with the third day following the date by which such obligation was payable: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1134.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of § 1134.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of § 1134.42(e)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1134.44(a) (7) and (11) and the corresponding steps of § 1134.44(b), except such other source milk that is excluded from the computations pursuant to § 1134.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1134.76(a)(2).

§ 1134.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1134.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) For producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 14th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deductions from each producer was computed.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 46 FR 28612, May 28, 1981, unless otherwise noted.

GENERAL PROVISIONS

§ 1135.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1135.2 Southwestern Idaho-Eastern Oregon marketing area.

"Southwestern Idaho-Eastern Oregon marketing area," hereinafter called the "marketing area," means all territory within the boundaries of the following Idaho and Oregon counties including all reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

IDAHO

Ada
Adams
Blaine
Boise
Camas
Canyon
Cassia
Elmore
Gem
Gooding
Jerome
Lincoln
Minidoka
Owyhee
Payette
Twin Falls
Valley
Washington

OREGON

Baker
Grant
Harney
Malheur
Union

§ 1135.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point or a vender and disposition from a plant store or through a vending machine) except a delivery to another plant.

§ 1135.4 Plant.

"Plant" means the buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit or used only for reloading milk from one tank truck to another for transshipment shall not be a "plant" under this definition.

§ 1135.5 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1135.6 Supply plant.

"Supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1135.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of the Grade A fluid milk products received at such plant (including milk diverted from such plant by the plant operator pursuant to § 1135.13); and

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distributing plant for the purpose of meeting this requirement if the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

(1) Any supply plant that has qualified as a pool plant in each of the immediately preceding months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month is filed by the plant operator with the market administrator prior to the first day of any such month. In such case, nonpool status will be effective until the plant again qualifies as a pool plant by meeting the transfer requirements; and

(2) The volume of fluid milk products included as qualifying shipments to a distributing plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by such pool distributing plant operator to the supply plant or to any other plant under the control of the supply plant operator.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant re-

quirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of as route disposition during the month in such other Federal marketing area than was disposed of as route disposition in this marketing area, and which is fully subject to the classification and pricing provisions of such other order;

(3) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order on the basis of route disposition in such other marketing area, and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section that also meets the pool plant requirements of another Federal order and from which greater qualifying transfers are made during the month to plants regulated under such other order than are made to plants regulated under this order, unless during the months of March through August the transfers to the other order plant are classified as Class II or Class III milk and the operator of the supply plant elects to retain automatic pooling under this part;

(5) A distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month; or

(6) Milk receiving and storage facilities that are on the same premises as a pool plant and are not approved by any regulatory agency for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

[46 FR 28612, May 28, 1981, as amended at 46 FR 62811, Dec. 29, 1981; 51 FR 12835, Apr. 16, 1986]

§ 1135.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant defined in § 1135.7(c)(5).

§ 1135.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted pursuant to § 1135.13 for the account of the cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples;

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a "proprietary bulk tank handler") must operate a plant located in the marketing area at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person in his capacity as the operator of a partially regulated distributing plant;

(f) Any person defined as a producer-handler;

(g) Any person in his capacity as the operator of another order plant described in § 1135.7(c) (2) and (3);

(h) Any person in his capacity as the operator of an unregulated supply plant; and

(i) Any person in his capacity as the operator of an exempt distributing plant.

§ 1135.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products from any source other than pool plants, other order plants, and bulk tank handlers described in § 1135.9 (b) and (d);

(c) Such receipts do not exceed the lesser of 5 percent of his Class I utilization during the month or 5,000 pounds;

(d) Does not reconstitute or convert milk products into fluid milk products except to increase by the addition of nonfat dry milk the nonfat milk solids content of its own farm production or of fluid milk products received from other sources; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1135.11 [Reserved]

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1135.9 (b), (c) or (d); or

(3) Diverted from a pool plant in accordance with § 1135.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person who produces milk that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1135.44(a)(8)(iii) and the corresponding step of § 1135.44(b); or

(3) Any person who produces milk that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order or the other order designates such person as a producer under such order.

§ 1135.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received at a pool plant from a handler described in § 1135.9(c);

(c) Received by a handler described in § 1135.9(c) in excess of the quantity delivered to pool plants;

(d) Received by a handler described in § 1135.9(d) that is not diverted pursuant to paragraph (f) of this section;

(e) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(f) Diverted from a pool plant to a nonpool plant by a pool plant operator or a handler described in § 1135.9 (b) or (d), subject to the following conditions:

(1) Milk of a dairy farmer who was not a "producer" in the preceding two months shall not be eligible for diversion until one day's production of milk is physically received at a pool plant;

(2) During each of a dairy farmer's first three months as a "producer" under this order, and after any period of two months or longer that a dairy farmer is not a "producer" under this order, milk of the dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f)(3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

(6) Any milk diverted in excess of the limits prescribed in paragraphs (f) (3), (4), and (5) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted by the handler on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for.

[46 FR 28612, May 28, 1981, as amended at 46 FR 62811, Dec. 29, 1981; 50 FR 36044, Sept. 5, 1985; 51 FR 12835, Apr. 16, 1986]

EDITORIAL NOTE: At 53 FR 50918, Dec. 19, 1988, in § 1135.13, paragraphs (f) (3), (4), (5) and (6) were temporarily suspended, effective December 1983 through May 1989.

§ 1135.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1135.9 (c) and (d), pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1135.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1135.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1135.40(b)(1)) for which the handler fails to establish a disposition.

§ 1135.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1135.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1135.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1135.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1135.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1135.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through

Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[47 FR 42975, Sept. 30, 1982]

HANDLER REPORTS

§ 1135.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on the forms prescribed by the market administrator, the following information for such month:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1135.9(c);

(3) Receipts of milk from handlers described in § 1135.9 (d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Inventories at the beginning and end of the month of fluid milk products specified in § 1135.40(b)(1); and

(7) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1135.9 (b), (c), and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1135.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1135.9 (a), (b), (c), and (d) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer for such month;

(1) His/her name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of his/her milk;

(5) In the case of cooperative associations, the identity of producers for whom the cooperative association is authorized to collect payment pursuant to § 1135.73, and

(6) The amount and nature of any deductions authorized in writing by the producer to be made from payments due such producer for milk delivered.

(b) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1135.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1135.40 Classes of utilization.

Except as provided in § 1135.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1135.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1135.15; and

(6) In shrinkage assigned pursuant to § 1135.41(a) to the receipts specified in § 1135.41(a)(2) and in shrinkage specified in § 1135.41 (b) and (c).

§ 1135.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1135.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from handlers described in § 1135.9 (c) and (d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers described in § 1135.9 (c) and (d) and in milk diverted to such plant from another pool plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero:

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handlers; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or the proprietary bulk tank handler shall be zero.

§ 1135.42 Classification of transfers and diversions.

(a) *Transfers and diversions (including deliveries by a handler described in § 1135.9(d)) to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or from a handler described in § 1135.9(d) to a pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk, and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computation pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1135.44(a)(7) and the corresponding step of § 1135.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1135.44(a) (11) or (12) or the corresponding steps of § 1135.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I

milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1135.40.

(c) *Transfers and diversions to producer-handlers and to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred or diverted by a handler described in § 1135.9 (a), (b), or (d) to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section;

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1135.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants to the extent possible, first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1135.43 General classification rules.

In determining the classification of producer milk pursuant to § 1135.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1135.30 and shall compute separately for each pool plant, and for each handler pursuant to § 1135.9 (b), (c), and (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1135.40, 1135.41, and 1135.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1135.9 (b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1135.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1135.9(a) for each of the handler's pool plants separately and of each handler described in § 1135.9 (b), (c), and (d) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1135.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1135.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1135.40(b)(1) that were in inventory at the beginning of the month in package form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1135.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1135.40(b)(1) that were not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section; and

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1135.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received.

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph (a)(1) exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1135.45(a) or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from 9(d) handlers according to the classification of such products pursuant to § 1135.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1135.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1135.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler as described in § 1135.9 (a), (b) and (d) who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handlers.

CLASS PRICES

§ 1135.50 Class prices.

The class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $1.50.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1135.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1135.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[46 FR 28612, May 28, 1981, as amended at 47 FR 42975, Sept. 30, 1982; 47 FR 57445, Dec. 27, 1982; 51 FR 12836, Apr. 16, 1986]

§ 1135.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1135.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1135.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1135.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[47 FR 42975, Sept. 30, 1982]

§ 1135.52 [Reserved]

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1135.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

[47 FR 42976, Sept. 30, 1982]

§ 1135.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

§ 1135.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1135.9 (b), (c), and (d) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1135.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1135.44(a)(14) and the corresponding step of § 1135.44(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1135.44(a)(9) and the corresponding step of § 1135.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7) (i) through (iv) and the corresponding step of § 1135.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7) (v) and (vi) and the corresponding step of § 1135.44(b); and

(f) Add the amount obtained from multiplying the Class I price by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and the corresponding step of § 1135.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1135.61 Computation of uniform price

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers who filed reports prescribed by § 1135.30 for the month and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(f); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price."

§ 1135.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1135.71, 1135.76, 1135.77 and 1135.78 and out of which he shall make all payments due handlers pursuant to §§ 1135.72 and 1135.77. Payments due from the fund shall be offset by payments due from such handler.

§ 1135.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1135.60.

(2) The sum of:

(i) The value at the uniform price of such handler's receipts of producer milk; and

(ii) The value at the uniform price of other source milk for which a value is computed pursuant to § 1135.60 (f).

§ 1135.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1135.71(a)(2) exceeds the amount computed pursuant to § 1135.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 1135.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers and cooperative associations as follows:

(a) On or before the last day of the month, each handler shall pay to each producer from whom milk was received during the first 15 days of the month not less than the Class III price per hundredweight for the preceding month.

(b) On or before the 18th day of the following month, each handler shall pay to each producer from whom milk was received during the month, the uniform price per hundredweight as adjusted pursuant to § 1135.74, less:

(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to § 1135.86; and

(3) Other proper deductions authorized by such producer in writing.

(c) On or before the second day prior to the dates specified in paragraphs (a) and (b) of this section, each handler shall pay a cooperative association for milk from producers who market their milk through the cooperative and who have authorized the cooperative to collect payments on their behalf an amount equal to the sum of the individual payments otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 18th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraphs (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) In making payments to individual producers as required by this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment is required pursuant to this order;

(4) The rate used in making payment, if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1135.74 Producer butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth of one percent variation from 3.5 percent by a butterfat differential rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1135.75 [Reserved]

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1135.30(b) and 1135.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1135.9 (b) and (d), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1135.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1135.(b) and (d), and an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1135.60 shall be priced at the uniform price of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest Class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1135.60 for such handler shall include, in lieu of the value of other source milk specified in § 1135.60(f) less the value of such other source milk specified in § 1135.71(a)(2)(ii), a value of milk determined pursuant to § 1135.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1135.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1135.30(b) and 1135.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1135.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1135.77 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1135.78 Charges on overdue accounts.

Any unpaid obligation pursuant to §§ 1135.71, 1135.76, 1135.77, 1135.78, 1135.85, and 1135.86, shall be increased 1 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1135.85 Assessment for order administration.

As his pro rata share of the expenses of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1135.44(a) (7) and (11) and the corresponding steps of § 1135.44(b), except such other source milk that is excluded from the computations pursuant to § 1135.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1135.76(a)(2).

§ 1135.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1135.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 13th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 16th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

PART 1136—[Reserved]

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1137.85 Assessment for order administration.
1137.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).

SOURCE: 47 FR 42978, Aug. 30, 1982, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1137.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1137.2 Eastern Colorado marketing area.

"Eastern Colorado marketing area" hereinafter called the "marketing area" means all the territory within the perimetric boundaries of the counties listed below, including all territory (municipal, State, or Federal) installations, institutions and other establishments:

COLORADO COUNTIES

Adams, Arapahoe, Boulder, Cheyenne, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Kiowa, Kit Carson, Las Animas, Larimer, Lincoln, Logan, Morgan, Otero, Park, Phillips, Pueblo, Sedgwick, Teller, Washington, Weld, Yuma.

KANSAS COUNTIES

Cheyenne, Logan, Sherman, Wallace.

§ 1137.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including a delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a nonpool plant: *Provided*, That packaged fluid milk products, except filled milk, that are transferred to a distributing plant from a plant with route disposition in the marketing area, and which are classified as Class I under § 1137.40(a), shall be considered as a route disposition from the transferor plant, rather than from the transferee plant, for the single purpose of qualifying it as a pool distributing plant under § 1137.7(a)(1).

§§ 1137.4—1137.6 [Reserved]

§ 1137.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which during the month fluid milk products are processed or packaged and from which:

(1) An amount equal to 50 percent or more of the total receipts of Grade A milk (except receipts from distributing pool plants) is disposed of as route disposition, except filled milk. A unit consisting of two or more distributing plants operated by a handler shall be considered as one distrubuting plant for the purpose of meeting the requirements of this subparagraph if each plant separately meets the requirements of paragraph (a)(2) of this section and the handler notifies the market administrator in writing before the first day of the month that the plants should be considered as a unit. The unit shall continue from month

to month thereafter without further notification. If, however, there is any change in the composition of the unit, the handler shall notify the market administrator in writing on or before the first day of the month such change is to be made; and

(2) Ten percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as route disposition, except filled milk, in the marketing area.

(b) Any plant, hereinafter referred to as a "supply pool plant" from which during the month 50 percent of its dairy farm supply of Grade A milk is moved to distributing pool plant(s) as fluid milk products, except filled milk. Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant in each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) Any distributing plant from which there is less than an average of 300 pounds of route disposition per day, except filled milk, in the marketing area during the month.

EDITORIAL NOTE: At 53 FR 39447, Oct. 7, 1988, § 1137.7(b) was amended by temporarily suspending the words "plant which has qualified as a" and "of March through August", effective September 1988 through February 1989.

§ 1137.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant which is neither an other order plant nor a producer-handler plant from which fluid milk products are moved during the month to a pool plant.

§ 1137.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of its member producers which it causes to be diverted for its account pursuant to § 1137.12;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notifies the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for all such milk. Such milk shall be deemed to have been received by such cooperative association at the location of the pool plant to which delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1137.7(c).

§ 1137.10 Producer-handler.

(a) "Producer-handler" means any person who operates a dairy farm and a milk processing plant from which there is route disposition in the marketing area and who:

(1) Receives no fluid milk products during the month from dairy farmers;

(2) Receives no fluid milk products during the month from any other source except by transfer from a pool plant; and

(3) Receives no other source milk for reconstitution into fluid milk products.

(b) Such person must provide proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the volume of fluid milk products (excluding transfers from pool plants) and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of such person.

§ 1137.11 [Reserved]

§ 1137.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk eligibl for distribution as Grade A milk i compliance with the fluid milk product requirements of a duly constitute health authority, whose milk is received at a pool plant or diverted to nonpool plant that is not a producer-handler plant within the limits se forth in paragraphs (a)(1) and (2) o this section:

(1) A cooperative association ma divert for its account the milk of an member-producer from whom at leas three deliveries of milk are receive during the month at a distributin pool plant. The total quantity of mil so diverted may not exceed 30 percen in the months of March, April, May June, July, and December and 20 percent in other months of its membe producer milk received at distributin pool plants during the month. Diversions in excess of such percentage shall not be considered producer mil and the diverting cooperative sha specify the dairy farmers whose mil is ineligible as producer milk. Two o more cooperative associations ma have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has file such a request in writing with th market administrator on or before th first day of the month the agreemen is effective. This request shall specif the basis for assigning over-diverte milk to the producer members of eac cooperative according to a method approved by the market administrator.

(2) A handler in his capacity as th operator of a distributing pool plan may divert for his account the milk o any producer, other than a member o a cooperative association which has d verted milk pursuant to paragrap (a)(1) of this section, from whom least three deliveries of milk are r ceived during the month at his distrib uting pool plant. The total quantity o milk so diverted may not exceed 3 percent in the months of March, Apri May, June, July, and December and 2 percent in other months of the mil received at such distributing po plant during the month from produ ers who are not members of a cooper tive association which has diverte milk pursuant to paragraph (a)(1) o

this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk.

(3) For the purposes of the requirements of § 1137.7, milk diverted for the account of the operator of a distributing pool plant, except an operator which is also a cooperative association diverting milk in the same month pursuant to paragraph (a)(1) of this section, shall be included in the receipts of the pool plant from which diverted.

(4) For purposes of location adjustments pursuant to §§ 1137.52 and 1137.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the nonpool plant to which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1137.44(a)(8)(iii) and the corresponding step of § 1137.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

[47 FR 42978, Aug. 30, 1982]

EDITORIAL NOTE: At 53 FR 39447, Oct. 7, 1988, § 1137.12(a)(1) was amended by temporarily suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant", effective September 1988 through February 1989.

§ 1137.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer.

(a) With respect to receipts at a pool plant for which the handler operating such plant is to be responsible pursuant to § 1137.60:

(1) Received directly from such producer; and

(2) Diverted from such pool plant to a nonpool plant for the account of the operator of the pool plant, subject to the limitations and conditions provided in § 1137.12;

(b) With respect to the additional receipts of a cooperative association:

(1) For which the cooperative association is the handler pursuant to § 1137.9(b), subject to the limitations and conditions provided in § 1137.12; and

(2) For which the cooperative association is the handler pursuant to § 1137.9(c).

§ 1137.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1137.40(b)(1) from any source other than producers, handlers described in § 1137.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1137.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1137.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1137.40(b)(1)) for which the handler fails to establish a disposition.

§ 1137.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1137.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1137.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1137.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 1137.19 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1137.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States pro-

duction area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

HANDLER REPORTS

§ 1137.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1137.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1137.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1137.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1137.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler described in § 1137.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1137.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1137.32 Other reports.

(a) On or before the seventh day after the end of each month, each handler described in § 1137.9 (a) and (b) who diverted milk to nonpool plants shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(1) The name of the plant to which diverted;

(2) The name of the individual dairy farmers so diverted;

(3) The pounds of skim milk and butterfat from each dairy farmer contained in the milk so diverted; and

(4) The number of days milk of the dairy farmer was received at a pool plant of the diverting order.

(b) In addition to the reports required pursuant to §§ 1137.30 and 1137.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1137.40 Classes of utilization.

Except as provided in § 1137.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1137.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and—I11(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1137.15; and

(6) In shrinkage assigned pursuant to § 1137.41(a) to the receipts specified in § 1137.41(a)(2) and in shrinkage specified in § 1137.41 (b) and (c).

§ 1137.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1137.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph in amounts equal to 50 times the maximum amount that may be computed pursuant to paragraphs (b) (1) through (6) of this section; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1137.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1137.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1137.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Except as provided in paragraph (e) of this section, skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1137.44(a)(12) and the corresponding step of § 1137.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1137.44(a)(7) or the corresponding step of § 1137.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1137.44(a) (11) or (12) or the corresponding steps of § 1137.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1137.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, tranfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1137.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers by a cooperative association to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1137.9(c) and from a pool plant operated by a cooperative association to another handler's pool plant shall be classified pursuant to § 1137.44 pro rata with producer milk received at the transferee-plant and the value thereof at the class prices shall be included in his value of milk pursuant to § 1137.60.

§ 1137.43 General classification rules.

In determining the classification of producer milk pursuant to § 1137.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1137.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1137.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1137.40, 1137.41, and 1137.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1137.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1137.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1137.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1137.9(a) for each of his pool plants separately the classification of producer milk and milk subject to the provisions of § 1137.42(e) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1137.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1137.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1137.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1137.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1137.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated top Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk subject to the provisions of § 1137.42(e), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1137.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received. For purposes of this subtraction at a pool plant operated by a cooperative association, skim milk in fluid milk products transferred to the pool plant of another handler shall be added to the remaining pounds of skim milk in each class pro rata to the market average utilization announced pursuant to § 1137.45(a):

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1137.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler). For purposes of such computation at a pool plant of a cooperative association, the pounds remaining shall include any remainder of the quantity added pursuant to paragraph (a)(11) of this section;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to §1137.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk subject to the provisions of § 1137.42(e), subtract such excess from the pounds of skim milk remaining in

each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk subject to the provisions of § 1137.42(e) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1137.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1137.44(a)(12) and the corresponding step of § 1137.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to § 1137.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant, the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in acccordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1137.50 Class prices.

Subject to the provisions of § 1137.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.73.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price: *Provided,* That for the first month this paragraph is effective the Class II price shall be the basic formula price for the month plus 10 cents.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1137.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1137.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[47 FR 42978, Aug. 30, 1982, as amended at 51 FR 12834, Apr. 16, 1986]

§ 1137.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1137.51a Basic Class II formula price.

The "Basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1137.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1137.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in

the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1137.52 Plant location adjustments for handlers.

(a) For milk received from producers and from handlers described in § 1137.9(c) at a pool plant, or diverted to a nonpool plant, located more than 50 miles by shortest highway distance as measured by the market administrator, from the plant to the nearest County Courthouse located in Denver, Colo.; Pueblo, Colo.; or Colorado Springs, Colo., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1137.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 75 miles from such courthouse, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 75 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1137.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1137.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and the final Class II price for the preceding month, except that the Class II price announced for the first month during which this section is effective shall be the price specified in the proviso in § 1137.50(b); and on or before the 15th day of each month the tentative Class II price for the following month.

§ 1137.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1137.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1137.9(b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk subject to the provisions of § 1137.42(e) that were classified in each class pursuant to §§ 1137.43(a) and 1137.44(c) by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1137.44(a)(14) and the corresponding step of § 1137.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1137.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to

§ 1137.44(a)(9) and the corresponding step of § 1137.44(b); and

(2) The the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1137.44(a)(9) and the corresponding step of § 1137.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1137.44(a)(12) and the corresponding step of § 1137.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1137.44(a)(7)(i) through (iv) and the corresponding step of § 1137.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1137.44(a)(7)(v) and (vi) and the corresponding step of § 1137.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1137.44(a)(11) and the corresponding step of § 1137.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1137.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1137.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1137.60 for all handlers who filed the reports prescribed by § 1137.30 for the month and who made the payments pursuant to §§ 1137.71 and 1137.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1137.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1137.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight of producer milk of 3.5 percent butterfat content delivered to plants at which no location adjustment is applicable.

§ 1137.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1137.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1137.71, 1137.76, and 1137.77, subject to the provision of § 1137.78 and out of which he shall make all payments pursuant to §§ 1137.72 and 1137.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1137.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1137.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1137.75, of such handler's receipts of producer milk and milk subject to the provisions of § 1137.42(e). In the case of a cooperative association which is a handler, less the amount due from other handlers pursuant to § 1137.73(c), exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1137.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1137.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1137.71(a)(2) exceeds the amount computed pursuant to § 1137.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1137.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (b) and (c) of this section, each handler except a cooperative association shall make payment as specified in paragraph (a) of this section to each producer from whom milk is received:

(a)(1) On or before the last day of each month, to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received during the first

15 days of the month at the Class III price for the preceding month.

(2) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1137.61, as adjusted by the butterfat differential specified in § 1137.74 and location adjustments specified in § 1137.75, plus or minus adjustments for errors made in previous payments to such producers and less:

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1137.86; and

(iii) Proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 1137.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraph (a) of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) For milk received from a pool plant operated by a cooperative association or from a cooperative association that is a handler pursuant to § 1137.9(c), each handler shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) A final settlement equal to the value of such milk at the uniform price pursuant to § 1137.61, as adjusted pursuant to §§ 1137.74 and 1137.75, less payment made pursuant to paragraph (c)(1) of this section.

(d) In making the payments to producers pursuant to paragraphs (a)(2) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 1137.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1137.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price to be paid for milk received at a pool plant from producers, in bulk from pool plants operated by cooperative associations, and from handlers described in § 1137.9(c) may be reduced by the amount of the location adjustment applicable at the location of the pool plant at which such milk was first physically received from producers, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of such nonpool plant, each at the rates set forth in § 1137.52; and

(b) For the purposes of computations pursuant to §§ 1137.71 and 1173.72 the uniform price shall be adjusted at the rates set forth in § 1137.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1137.76 Payments by the handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1137.30(b) and 1137.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not another order plant to the extent that the equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1137.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1137.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1137.60 for such handler shall include, in lieu of the value of other source milk specified in § 1137.60(f) less the value of such other source milk specified in § 1137.71(a)(2)(ii), a value of milk determined pursuant to § 1137.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1137.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1137.30(b) and 1137.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1137.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1137.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1137.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1137.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in moneys due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1137.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1137.71 or § 1137.77 relative to payments to the producer settlement fund shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1137.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including milk subject to the provisions of § 1137.42(e) but excluding such milk in the case of a cooperative association which is a handler of milk subject to the provisions of § 1137.42(e)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1137.44(a) (7) and (11) and the corresponding steps of § 1137.44(b), except such other source milk that is excluded from the computations pursuant to § 1137.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1137.76(a)(2).

§ 1137.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1137.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed from each producer.

PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1138.85 Assessment for order administration.
1138.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 39 FR 16105, May 7, 1974, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1138.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1138.2 Rio Grande Valley marketing area.

"Rio Grande Valley marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the counties of Bernalillo, Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia, all in the State of New Mexico; El Paso in the State of Texas; and Archuleta, Montezuma, and La Plata, in the State of Colorado.

§ 1138.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk products classified as Class I milk, other than a delivery to a pool plant or nonpool plant.

§§ 1138.4—1138.6 [Reserved]

§ 1138.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which there is route disposition in the marketing area equal to not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less: *Provided*, That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant.

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which there is route disposition, except filled milk, equal to not less than 50 percent of its receipts of Grade A milk during the month and route dispositon, except filled milk, in the marketing area equal to at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

(c) Any plant, hereinafter referred to as a "cooperative standby pool plant," which is operated by a cooperative association, and is located within the marketing area, if 50 percent or more of the milk delivered during the month by producers who are members of such association is delivered directly or is transferred by the association to pool plants of other handlers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period March through July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1138.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued purusant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.7 and which is not an other order plant nor a producer-handler plant.

§ 1138.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of any member producer which such cooperative association causes to be diverted pursuant to § 1138.12 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notified the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be a handler for such milk. For purposes of location adjustments to producers such milk is considered to have been received from producers by the cooperative association at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area; and

(e) Any person in his capacity as the operator of a nonpool plant from which Grade A milk as shipped to a pool plant pursuant to § 1138.7(a).

§ 1138.10 Producer-handler.

(a) "Producer-handler" means any person who processes and packages milk from his own farm production, who has route disposition within the marketing area consisting of any portion of such milk, and who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and receipts from pool plants shall not be in excess of 11,000 pounds per month or, any person who processes and packages certified milk from his own farm production and disposes of such milk to another plant and who receives no milk from any source except his certified herd: *Provided,* That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

(b) In the case of a producer-handler of certified milk, the certified dairy herd and the milk plant in which the certified milk is handled shall be considered one business unit and shall not include milk which is delivered to other handlers' plants from a noncertified herd maintained on the same farm.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided,* That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(1) Received at a pool plant; or

(2) Diverted for the account of the diverting handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(i) A cooperative association may divert for its account the milk of any member producer, whose milk is received at a distributing pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of its member producer milk received at all pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers provided each association has filed such a request in writing with the market administrator;

(ii) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section, whose milk is received at his pool plant for at least 3 days during the month, without limit during the other days of such month.

However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of the milk received at such pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk;

(iii) For purposes of the requirements of § 1138.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(iv) For the purposes of location adjustments pursuant to §§ 1138.52 and 1138.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted when the farm on which the milk is produced is located within the marketing area and at the location of the nonpool plant where received when the farm on which the milk is produced is located outside the marketing area.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1138.44(a)(8)(iii) and the corresponding step of § 1138.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1138.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 1138.12. Milk received at a pool plant from a handler described in § 1138.9(c) shall be considered under this part as producer milk of the pool plant operator. Milk received from producers by a handler described in § 1138.9(c) but not delivered to pool plant shall be considered under this part as producer milk of such handler.

§ 1138.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1138.40(b)(1) from any source other than producers, handlers described in § 1138.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid mil products, products specified in § 1138.40(b)(1), and products produced at the plant during the same month from any source which are reprocessed, converted into, or combined with another product in the plan during the month; and

(d) Receipts of any milk produc (other than a fluid milk product or product specified in § 1138.40(b)(1) fo which the handler fails to establish disposition.

§ 1138.15 Fluid milk product.

(a) Except as provided in paragrap (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, ski milk, lowfat milk, milk drinks, butte milk, filled milk, and milkshake an ice milk mixes containing less than percent total solids, including an such products that are flavored, cu tured, modified with added nonf milk solids, concentrated (if in a consumer-type package), or reconstitute

(b) The term "fluid milk product shall not include:

(1) Evaporated or condensed mil (plain or sweetened), evaporated condensed skim milk (plain or swee ened), formulas especially prepar for infant feeding or dietary use th are packaged in hermetically seal glass or all-metal containers, any pro

uct that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

[39 FR 16105, May 7, 1974, as amended at 40 FR 31945, July 30, 1975]

§ 1138.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1138.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1138.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

§ 1138.19 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

§ 1138.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1138.51a:

(a) *Butter price.* "Butter price" means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price.* "Cheddar cheese price" means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price.* "Nonfat dry milk price" means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of the section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price.* "Edible whey price" means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central State production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

[46 FR 43405, Aug. 28, 1981]

HANDLER REPORTS

§ 1138.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1138.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1138.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1138.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer.

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1138.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1138.32 Other reports.

In addition to the reports required pursuant to §§ 1138.30 and 1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section.

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and

is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1138.15; and

(6) In shrinkage assigned pursuant to § 1138.41(a) to the receipts specified in § 1138.41(a)(2) and in shrinkage specified in § 1138.41 (b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1138.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1138.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1138.44(a)(11) or (12) or the corresponding steps of § 1138.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any recepits at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1138.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified;

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in

bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1138.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at the nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1138.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41, and 1138.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1138.9(a) for each of his pool plants separately and of each handler described in § 1138.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1138.41(b);

(2) Subtract in the following order from the total pounds of skim milk in Class I:

(i) The pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) The pounds of skim milk in receipts of packaged certified fluid milk products from a producer-handler if disposed of in the same form as received;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1138.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1138.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order that were not subtracted pursuant to paragraph (a)(2)(ii) of this section;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess

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of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1138.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1138.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available:

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1138.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1138.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1138.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1138.50 Class prices.

Subject to the provisions of § 1138.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.35.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that, for each month after the first month in which this paragraph is effective, the final Class II price shall be not less than the Class III price.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1138.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1138.51a.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

[39 FR 16105, May 7, 1974, as amended at 40 FR 6322, Feb. 11, 1975; 45 FR 65514, Oct. 3, 1980; 46 FR 43406, Aug. 28, 1981; 51 FR 12834, Apr. 16, 1986]

§ 1138.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1138.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1138.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1138.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

NOTE: The computation of the basic class II formula price is affected by a determination document published on September 6, 1984, at 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

[46 FR 43406, Aug. 28, 1981, as amended at 49 FR 35078, Sept. 6, 1984]

§ 1138.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant in Zone 1 (comprising the counties of Bernalillo, Dona Ana, Grant, Guadalupe, Harding, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia, all in the State of New Mexico, and El Paso, Tex.), which is classified as Class I milk, the Class I price shall be the price computed pursuant to § 1138.50(a).

(b) For milk received from producers at a pool plant in Zone II (comprising the counties of Archuleta, La Plata and Montezuma, Colorado, and San Juan, N. Mex.), and in Zone III (comprising the counties of Eddy, Chaves, Curry, De Baca, Lea, Quay, and Roosevelt, N. Mex.), which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the Class I price shall be the price computed pursuant to § 1138.50 (a) minus 15 cents.

(c) For milk received from producers at a pool plant located outside the marketing area and more than 100 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the county courthouses in Bernalillo or Santa Fe Counties, N. Mex., or El Paso, Tex., and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the price computed pursuant to § 1138.50(a) shall be reduced by 15 cents and by an additional cent for each 10 miles or fraction thereof, that such distance calculated from the Bernalillo, Santa Fe, or El Paso County Courthouse, whichever is nearer, exceeds 110 miles.

(d) For purposes of calculating such adjustment, bulk transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(e) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (b) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

[46 FR 43406, Aug. 28, 1981]

§ 1138.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1138.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1138.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1138.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1138.44(a)(9) and the corresponding step of § 1138.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7)(i) through (iv) and the corresponding step of § 1138.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (v) and (vi) and the corresponding step of § 1138.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(11) and the corresponding step of § 1138.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1138.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the "uniform price" (and "weighted average price") per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1138.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price."

(f) The weighted average price shall be the "uniform price" for milk received from producers.

[44 FR 18951, Mar. 30, 1979, as amended at 44 FR 53721, Sept. 17, 1979]

§ 1138.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1138.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and 1138.77: *Provided*, That any payments due any handler shall be offset by any payments due from such handler.

§ 1138.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1138.60.

(2) The sum of:

(i) The value at the uniform prices,
adjusted pursuant to § 1138.75, of
ch handler's receipts of producer
lk; and
(ii) The value at the weighted aver-
e price applicable at the location of
e plant from which received of other
urce milk for which a value is com-
ted pursuant to § 1138.60(f).
(b) On or before the 25th day after
e end of the month each person who
erated an other order plant that
s regulated during such month
der an order providing for individ-
l-handler pooling shall pay to the
rket administrator an amount com-
ted as follows:
(1) Determine the quantity of recon-
tuted skim milk in filled milk in
ute disposition from such plant in
e marketing area which was allocat-
to Class I at such plant. If there is
ch route disposition from such plant
marketing areas regulated by two or
re marketwide pool orders, the re-
nstituted skim milk allocated to
ass I shall be prorated to each order
cording to such route disposition in
ch marketing area; and
2) Compute the value of the recon-
tuted skim milk assigned in para-
ph (b)(1) of this section to route
position in this marketing area by
ltiplying the quantity of such skim
lk by the difference between the
ass I price under this part that is ap-
cable at the location of the other
der plant (but not to be less than
e Class III price) and the Class III
ce.

FR 16105, May 7, 1974, as amended at 44
18952, Mar. 30, 1979]

138.72 Payments from the producer-settlement fund.

On or before the 14th day after the
d of each month the market admin-
rator shall pay to each handler the
ount, if any, by which the amount
nputed pursuant to § 1138.71(a)(2)
ceeds the amount computed pursu-
to § 1138.71(a)(1). If at such time
e balance in the producer-settle-
nt fund is insufficient to make all
yments pursuant to this section, the
rket administrator shall reduce uni-
mly such payments and shall com-
te such payments as soon as the
nds are available.

§ 1138.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (c) and (e) of this section, each handler, except a cooperative association, shall make payment to each producer from whom milk is received as specified in paragraphs (a) and (b) of this section:

(a) On or before the last day of the month, to each producer who had not discontinued shipping milk to such handler before the 28th day of the month, a partial payment equal to the uniform price for the preceding month multiplied by the hundredweight of milk delivered during the first 15 days of the current month less authorized deductions.

(b) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1138.61, as adjusted pursuant to §§ 1138.74 and 1138.75, plus or minus adjustments for errors made in previous payments to such producers and less;

(1) Payments made pursuant to paragraph (a) of this section

(2) Deductions for marketing services pursuant to § 1138.86; and

(3) Proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 1138.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraphs (a) and (b) of this section, respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) In making final settlement, the value of such milk at the applicable uniform price as adjusted pursuant to §§ 1138.74 and 1138.75, less the amount of partial payment made on such milk.

(3) The minimum rate or rates at which payment to such producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) Each handler who receives milk from a handler described in § 1138.9(c), shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment in the amount specified in paragraph (a) of this section; and

(2) The total pounds and the average butterfat content of milk received from such producer;

(f) Each handler who receives milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report on or before the eighth day after the end of the month to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) The days of delivery, the total pounds of milk, and the average butterfat test of milk received from such producer during the month;

(2) The amount or rate and nature of any deductions; and

(3) The amount of any payments due such producer pursuant to § 1138.77.

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located in Zones II and III or at pool plants located outside the marketing area and more than 100 miles, as determined by the market administrator, from the nearest of the county courthouses in El Paso County, Tex., or Bernalillo, or Santa Fe Counties, N. Mex., there shall be deducted an adjustment for each such plant for all milk at the rates specified pursuant to § 1138.52.

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the weighted average price shall be adjusted at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

[39 FR 16105, May 7, 1974, as amended at 44 FR 18952, Mar. 30, 1979]

§ 1138.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1138.30(b) and 1138.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant:

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1138.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant:

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1138.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1138.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1138.30(b) and 1138.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1138.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated:

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1138.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of an other order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

[39 FR 16105, May 7, 1974, as amended at 44 FR 18952, Mar. 30, 1979]

§ 1138.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1138.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. If a handler elects pursuant to § 1138.19 to use two accounting periods in any month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk including such handler's own production:

(b) Other source milk allocated to Class I pursuant to § 1138.44(a) (7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computations pursuant to § 1138.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1138.76(a)(2).

§ 1138.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself for milk pursuant to § 1138.73, shall deduct 3 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 16th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deduction and the quantity of milk on which the deduction was computed from each producer.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

Subpart—Order Regulating Handling

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1139.85 Assessment for order administration.
1139.86 Deduction for marketing services.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 53 FR 4590, Feb. 17, 1988, unless otherwise noted.

Subpart—Order Regulating Handling

GENERAL PROVISIONS

§ 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference, and made a part of this order.

DEFINITIONS

§ 1139.2 Great Basin marketing area.

"Great Basin marketing area" (hereinafter called the "marketing area") means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

Utah Counties: All
Nevada Counties: Clark, Elko, Lincoln and White Pine
Wyoming Counties: Lincoln and Uinta
Idaho Counties: Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine). The term "route disposition" does not include a delivery to a plant defined in § 1139.7 (a) or (b).

§ 1139.4 [Reserved]

§ 1139.5 Distributing plant.

"Distributing plant" means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

[53 FR 4590, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.6 Supply plant.

"Supply plant" means a plant from which approved fluid milk products or filled milk are transferred in bulk form during the month to a pool distributing plant.

§ 1139.7 Pool plant

"Pool plant" means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of the following paragraphs:

(a) A distributing plant from which not less than:

(1) 50 percent in any month of September through February, 45 percent of any month of March and April, and 40 percent in any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other

order plants or dairy farms which is classified in Class II or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and

(2) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(3) If a handler operates more than one distributing plant, the combined receipts and fluid milk product dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to paragraph (a)(1) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(b) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant meets the requirements of paragraph (a)(1) of this section; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed and packaged fluid milk products.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farmers is transferred to a pool distributing plant pursuant to paragraphs (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b) or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 45 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month, if the cooperative association or federation requests pool plant status for such plant in writing before the first day of any month for which such status is to be effective.

(e) The pool plant performance standards in paragraphs (a)(1), (b), (c) or (d) of this section may be reduced or increased by 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any plant defined in this section, and any other milk receiving, manufacturing, or processing plant, other than a pool plant:

(a) "Producer-handler plant" means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) "Other order plant" means a plant as specified under paragraph (b)(1), (2) or (3) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act:

(1) A distributing plant qualified pursuant to §1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed

of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to § 1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to § 1139.7(a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) "Exempt plant" means a distributing plant:

(1) Having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month;

(2) Operated by a governmental agency, or a duly accredited college or university, disposing of fluid milk products only through the operation of its own food service, and having no route dispositions in commercial channels; or

(3) From which the total route disposition is to individuals or institutions for charitable purposes without remuneration from such individuals or institutions.

(d) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Unregulated supply plant" means a supply plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

§ 1139.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1139.13;

(c) Any cooperative association or federation with respect to milk that is received at the farm for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association or federation; or

(d) Any person who operates a plant defined in § 1139.8 (a) through (e).

§ 1139.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in paragraph (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person's sole risk, and under such person's complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the sole risk of such person, and under such person's complete and exclusive management and control; and

(3) Only such person, and no other person (except a member of such person's immediate family, or a stockholder in the case of a corporate operator) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which approved milk is processed or packaged and from which there is route disposition during the month in the marketing area, and:

No fluid milk products are re-
at such plant during the month
such person at any other loca-
xcept:
rom the dairy farm(s) specified
agraph (a) of this section; and
From pool plants by transfer or
on, or from other order plants,
amount that is not in excess of
rger of 5,000 pounds or 5 percent
h person's Class I disposition
the month;
Such plant is operated under
person's complete and exclusive
ement and control and at such
's sole risk, and is not used
the month to process, package,
e or otherwise handle fluid milk
ts for any other person; and
For the purpose of this section,
id milk products disposed of as
disposition or at stores operated
h person or by any person (in-
g the operator of a plant, or
) who controls or is controlled
h person (e.g., as an interlocking
older) or in which such person
ling, in the case of a corpora-
ny stockholder therein) has a fi-
l interest, shall be considered as
been received at such person's
and the utilization for such
shall include all such route and
lispositions; and
Disposes of no other source milk
t in the fortification of fluid
roducts) as Class I milk.

1 Approved milk.

proved milk" means any milk or
nilk product that is approved for
onsumption by a duly constitut-
ulatory authority.

2 Producer.

Except as provided in paragraph
ereof, "producer" means any
:
Who produces approved milk;

Whose milk is received at a pool
or diverted to a nonpool plant
the limits set forth in § 1139.13.
Producer" shall not include:
A producer-handler as defined
any order (including this order)
pursuant to the Act;
Any person with respect to milk
ed to a pool plant from an other order plant, if the other order designates such person as a producer under that order, and such milk is allocated to Class II or Class III utilization pursuant to § 1139.44(a)(5)(iii) and the corresponding step of § 1139.44(b);

(3) Any person with respect to milk diverted to another order plant if any part of such milk was allocated to Class I, or the other order defines such person as a producer; or

(4) Any person whose milk is received at a nonpool plant (except an other order plant) other than as a diversion from a pool plant after the first delivery of milk from such dairy farmer in any month was received as approved milk at a pool plant, or was otherwise qualified as producer milk.

§ 1139.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1139.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's pool plant from a handler defined in § 1139.9(c); or

(3) Diverted to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;

(b) Diverted by a handler defined in § 1139.9(b) to a nonpool plant subject to the conditions set forth in paragraph (d) of this section;

(c) Received by a handler defined in § 1139.9(c) from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to paragraph (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;

(d) The following conditions shall apply to producer milk diverted to a nonpool plant:

(1) The milk shall be priced at the location of the plant to which diverted;

(2) A cooperative association or federation may divert for its account the milk of any of its producers from

whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August and 50 percent in other months of the producer milk which the association or federation causes to be delivered to pool plants or diverted to nonpool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator;

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to paragraph (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 60 percent in the months of April through August, and 50 percent in other months of the producer milk received at or diverted from such pool plant for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to paragraph (d)(2) of this section;

(4) The diversion limits of this paragraph may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the needs for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Diversions in excess of the percentages in paragraphs (d)(2) and (d)(3) of this section shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by the producer during the month as producer milk will not be subject to § 1139.12(b)(4); and

(6) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until after one day's milk production from such farmer has been received at a pool plant.

§ 1139.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1139.40(b)(1) from any source other than producers, handlers defined in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1139.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1139.40(b)(1)) for which the handler fails to establish a disposition.

§ 1139.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), or reconstituted.

(b) The term "fluid milk products" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), whey, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1139.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1139.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring), resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers, including producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1139.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1139.51(b) and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) "Butter price" means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the

prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) "Edible whey price" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

§ 1139.20 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in § 1139.18.

HANDLER REPORTS

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler who operates one or more pool plants shall report for each such plant the quantities of, and the pounds of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler, and the pounds of milk protein contained in such receipts;

(2) Receipts of milk from handlers defined in § 1139.9(c) and the pounds of milk protein contained in such receipts;

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization, disposition or month-end inventories of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required under paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler as defined in § 1139.9(b) and (c) shall report:

(1) The quantities of, and pounds of skim milk, butterfat and milk protein contained in receipts of milk from producers; and

(2) The utilization or disposition of all skim milk, butterfat and milk protein in such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to all receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

[53 FR 4590, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pays producers pursuant to § 1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions from such payment;

(5) The net amount of payment to the producer; and

(6) The date the payment was made.

(b) On or before the 21st day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76(a)(2) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1139.32 Other reports.

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

CLASSIFICATION OF MILK

§ 1139.40 Classes of utilization.

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese (all forms);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) *Class III milk.* Class III milk shall be all butterfat and skim milk:

(1) Used to produce:

(i) Cheese, other than cottage cheese in any form;

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated milk or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of

the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15;

(6) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a)(2) and in shrinkage specified in § 1139.41(b) and (c).

[53 FR 4590, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1139.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim and butterfat, respectively, at each pool plant to the respective qualities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator, or received from handlers defined in § 1139.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers defined in § 1139.9(c), except if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association or federation is the handler pursuant to § 1139.9(b) or (c), but not in excess of 0.5 percent of skim milk and butterfat, respectively, thereof. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and protein and butterfat tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or federation shall be zero.

§ 1139.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the clas-

ication of such transfers shall be
bject to the following conditions:

(1) The skim milk or butterfat classi-
d in each class shall be limited to
e amount of skim milk and butter-
t, respectively, remaining in such
ass at the transferee-plant after the
mputation pursuant to § 1139.44
)(12) and the corresponding step of
1139.44(b);

(2) If the transferor-plant received
ring the month other source milk to
allocated pursuant to
1139.44(a)(7) or the corresponding
ep of § 1139.44(b), the skim milk or
tterfat so transferred shall be classi-
d so as to allocate the least possible
ass I utilization to such other source
lk; and

(3) If the transferor-handler re-
ived during the month other source
lk to be allocated pursuant to
1139.44(a)(11) or (12) or the corre-
onding steps of § 1139.44(b), the
im milk or butterfat so transferred,
to the total of the skim milk and
tterfat, respectively, in such re-
ipts of other source milk, shall not
classified as Class I milk to a great-
extent than would be the case if the
her source milk had been received at
e transferee-plant.

(b) *Transfers and diversions to other
der plants.* Skim milk or butterfat
ansferred or diverted in the form of
fluid milk product or transferred in
e form of a bulk fluid cream product
om a pool plant to an other order
ant shall be classified in the follow-
g manner. Such classification shall
ply only to the skim milk or butter-
t that is in excess of any receipts at
e pool plant from the other order
ant of skim milk and butterfat, re-
ectively, in fluid milk products and
lk fluid cream products, respective-
, that are in the same category as de-
ribed in paragraph (b)(1),(2), or (3)
this section:

(1) If transferred as packaged fluid
ilk products, classification shall be in
e classes to which allocated as a
uid milk product under the other
der;

(2) If transferred or diverted in bulk
rm, classification shall be in the
asses to which allocated under the
her order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat in the following forms that is transferred or diverted to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the transferor-handler or divertor-handler so requests and the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignments of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1139.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of approved milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of approved milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of approved milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

[53 FR 4590, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.43 General accounting and classification rules.

(a) Each month the market administrator shall:

(1) Correct for mathematical and other obvious errors all reports filed pursuant to § 1139.30; and

(2) Compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1139.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1139.40, 1139.41, and 1139.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1139.9 (b) or (c) shall be such handler's classification of producer milk.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1139.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1139.44 Classification of producer milk.

For each month the market administrator shall determine for each handler defined in § 1139.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1139.9(c) by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1139.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1139.40(b)(1) that were in inventory at the beginning of the month in packaged form but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1139.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and packaged inventory at the beginning of the month of products specified in § 1139.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which approved milk status is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order, or from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of milk from a dairy farmer pursuant to § 1139.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III;

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (a)(7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(*a*) through (*c*) this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1139.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (a)(7)(v), and (a)(8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1139.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to either paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1139.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1139.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1139.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1139.44(a)(12) and the corresponding step of § 1139.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1139.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS AND COMPONENT PRICES

§ 1139.50 Class prices and component prices.

Subject to the provisions of § 1139.51 and § 1139.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price computed pursuant to § 1139.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, except that in no event shall the final Class II price be less than the Class III price for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows: Subtract from the basic formula price an amount computed by multiplying the current month's butter price, based on the simple average of the wholesale selling prices per pound (using the mid-point of any price range as one price) of approved (92-score) bulk butter, f.o.b. Chicago, as reported by the Department for the month, by 4.025, and divide by 100. Add to the resulting amount the current month's butter price multiplied by 1.15. The sum thereof shall be the price per pound for producer butterfat for the month.

(e) *Milk protein price.* The price for milk protein per pound shall be computed by subtracting from the basic formula price the butterfat price multiplied by 3.5, and dividing the result by the average percentage of protein in all producer milk for the preceding month.

(f) *Skim milk price.* The skim milk price per hundredweight shall be the basic formula price for the month adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest cent. Such adjustment shall be computed by multiplying the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month, by 4.025 and subtracting the result from the basic formula price.

[53 FR 4590, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.51 Basic formula prices.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of approved (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1139.19 and yield factors in effect under the Dairy Price Support program author-

ized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(*a*) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(*b*) Multiply the butter price by the yield factor used under the Price Support program for determining the butterfat component of the whey value in the cheese price computation; and

(*c*) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(*a*) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(*b*) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

§ 1139.52 Plant location adjustments for handlers.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) *Zone 1* 0 adjustments.

Utah Counties

Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Jaub, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch and Weber

Nevada Counties

Elko and White Pine

(2) *Zone 2* Minus $0.25 adjustment.

Idaho Counties

Bannock, Bear Lake, Caribou, Franklin, Oneida and Power

(3) *Zone 3* Minus $0.30 adjustment.

Idaho Counties

Bingham, Bonneville, Jefferson and Madison

Wyoming Counties

Lincoln and Uinta

Nevada Counties

Clark and Lincoln

Utah Counties

Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington and Wayne

(b) For milk received from producers at a plant located outside the zones specified in paragraph (a) of this section, the Class I price applicable at the nearer of the Clark County, Nevada, courthouse or the Salt Lake County, Utah, courthouse shall be reduced by 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway, as determined by the market administrator, between the plant and the nearer of the two courthouses.

(c) For purposes of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any Class I utilization at the transferee plant that is in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(d) The Class I differential applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) or (b) of this section, except that the differential shall not be less than zero.

[53 FR 4590, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the tentative Class II price for the following month; and

(c) The 5th day after the end of each month, the Class III price, the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f), and the final Class II price for such month.

§ 1139.54 Equivalent price.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

DIFFERENTIAL POOL AND HANDLER OBLIGATIONS

§ 1139.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1139.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1139.9(b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1139.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1139.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1139.44 multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1139.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1139.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1139.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds

of overage subtracted from Class I pursuant to § 1139.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(14) and the corresponding step of § 1139.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1139.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1139.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1139.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1139.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1139.44(a)(9) and the corresponding step of § 1139.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (i) through (iv) and (vii), and the corresponding step of § 1139.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(7) (v) and (vi) and the corresponding step of § 1139.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1139.44(a)(11) and the corresponding step of § 1139.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1139.44, multiplied by the skim milk price for the month computed pursuant to § 1139.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1139.50(e).

§ 1139.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted avrage differential value for milk received from all producers as follows:

(a) Combine into one total the alues computed pursuant to § 1139.60, aragraphs (a) through (g), for all andlers who made reports pursuant o § 1139.30 and who made payments ursuant to § 1139.71 for the preceding month;

(b) Add an amount equal to the sum f the deductions to be made for locaion adjustments pursuant to 1136.75;

(c) Add an amount equal to not less han one-half the unobligated balance n the producer-settlement fund;

(d) Divide the resulting amount by he sum of the following for all haniers included in these computations:

(1) The total hundredweight of proucer milk;

(2) The total hundredweight for hich a value is computed pursuant to 1139.60(g).

(e) Subtract not more than 5 cents er hundredweight. The result is the Weighted Average Differential rice".

1139.62 Computation of producer protein price.

For each month the market administrator shall compute the producer proein price to be paid to all producers or the pounds of protein in their ilk, as follows:

(a) Combine into one total the alues computed pursuant to § 1139.60, aragraphs (h) and (i), for all handlers ho made reports pursuant to 1139.30 and who made payments puruant to § 1139.71 for the preceding onth;

(b) Divide the resulting amount by he total pounds of protein in producr milk; and

(c) Round to the nearest whole cent. he result is the "Producer protein rice."

1139.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer ilk containing 3.5 percent butterfat hall be computed by adding the eighted average differential price deermined pursuant to § 1139.61 to the asic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1139.73 and 1139.74.

§ 1139.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1139.61, the producer protein price computed pursuant to § 1139.62, and the uniform price computed pursuant to § 1139.63(a).

PAYMENTS FOR MILK

§ 1139.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to §§ 1139.71, 1139.76 and 1139.77, subject to the provisions of § 1139.78, and out of which he shall make payments pursuant to §§ 1139.72 and 1139.77. Payment due a handler from the fund shall be offset as appropriate against payments due from such handler.

§ 1139.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to § 1139.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the weighted average differential price adjusted pursuant to § 1139.75; and

(ii) The value of the protein in such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c) at the producer protein price computed pursuant to § 1139.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1139.60(g).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route dispositions from such plant in the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price f.o.b. the other order plant and the Class III price.

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received from each producer during the first 15 days of the month shall be determined by a rate computed by multiplying the Class III price for the preceding month by 1.2, but not to exceed the current month's Class I price.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to § 1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer multiplied by the producer protein price computed pursuant to § 1139.62; plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1139.50(d).

§ 1139.74 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (c), (d) or (e) of this section, each handler shall, on or before the last day of each month, make a partial payment to each producer from whom milk was received during the first 15 days of the month, and who had shipped milk to such handler through the 17th day of the month, at the rate set forth in § 1139.73(a), less proper deductions authorized in writing by such producer;

(b) Except as provided in paragraph (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month, make a final payment to each producer for milk received from such producer during the month at no less than the total amount computed in accordance with the provisions set forth in § 1139.73(b) with respect to such milk:

(1) Less any deductions for marketing services pursuant to § 1139.86;

(2) Less payment made pursuant to paragraph (a) of this section for such month;

(3) Less proper deductions authorized in writing by such producer;

(4) Plus or minus adjustments for errors made in previous payments to such producer and proper deductions authorized in writing by such producer; and

(5) If by the date specified such handler has not received full payment from the market administrator pursuant to § 1139.72 for such month, the handler may reduce his payments to producers pro rata by not more than the amount of such underpayment.

ayments to producers shall be com-
eted thereafter no later than the
ate for making payments pursuant to
is paragraph next following after re-
ipt of the balance due from the
arket administrator.

(c) In the case of a cooperative asso-
ation authorized by its members to
llect payment for their milk, and
hich has requested such payment
om any handler in writing and has
notified the market administrator,
ayment shall be made for milk re-
ived during the month as follows:

(1) On or before the 3rd day prior
e last day of the month for milk re-
ived from the members of such co-
erative association at the rates set
rth in § 1139.73(a); and

(2) On or before the 16th day of the
llowing month such handler shall
y to such cooperative association
e sum of the payments computed in
cordance with the procedures set
rth in § 1139.73(b) with respect to
liveries by producer-members of
ch cooperative association to
ndler(s) from whom payment has
en requested, less the amounts of
yments made to such cooperative as-
ciation pursuant to paragraph (c)(1)
this section, and less the amount re-
ined by handlers as authorized de-
ctions.

(d) Each handler who received milk
om producers for which payment is
be made to a cooperative associa-
on pursuant to paragraph (c) of this
ction shall report to such coopera-
e association and to the market ad-
inistrator on or before the 7th day
the following month as follows:

(1) The total pounds of milk received
ring the month and, if requested,
e pounds received from each
ember-producer;

(2) The amount of payment made
rsuant to paragraph (c)(1) of this
ction and the quantity of milk to
hich such payment applied; and

(3) The amount or rate and nature
any proper deductions authorized
be made from such payments.

(e) Each handler shall pay a cooper-
ive association for milk received
om such cooperative association in
capacity as a handler defined in
1139.9(c), or from a pool plant oper-
ed by such association as follows:

(1) On or before the 2nd day prior to the last day of each month for milk received during the first 15 days of the month an amount per hundredweight computed pursuant to the provisions of § 1139.73(a); and

(2) On or before the 15th day of the following month for milk received during the month at not less than the value computed for such milk in accordance with the provisions under § 1139.73(b), less the amounts of payments made to such cooperative association pursuant to paragraph (e)(1) of this section, and less the amount retained by handlers as authorized deductions.

§ 1139.75 Location and zone differentials for producer and nonpool milk.

(a) In making payments computed pursuant to § 1139.72, the market administrator shall reduce the weighted average differential price computed pursuant to § 1139.61 by the location or zone differential applicable at the plant where such milk was first received from producers.

(b) The weighted average differential price applicable to other source milk pursuant to § 1139.71(a)(2)(iii) shall be adjusted at the rates set forth in § 1139.52 (a) or (b) applicable at the location of the nonpool plant from which the milk was received (but not to be less than zero).

§ 1139.76 Payments by a handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk classification and pricing program that provides for marketwide pooling of producer returns and is enforced under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a)(1) of this section, or, if the handler submits pursuant to §§ 1139.30(b) and 1139.31(b) the information necessary for making the appropriate computations, and so elects, the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the amount the Class I-Class III price difference exceeds the weighted average differential computed pursuant to § 1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(1)(iii) of this section by the difference between the Class I price adjusted to the appropriate plant location and the Class III price (but in no case less than 0).

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60(e) shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price (or weighted average price) adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order;

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1139.60 for such handler shall include in lieu of the value of other source milk specified in § 1139.60(g) less the value of such other source milk specified in § 1139.71(a)(2)(iii) a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(c) subject to the following conditions:

(*1*) The operator of the partially regulated distributing plant submits with reports filed for the month pursuant to §§ 1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

(*2*) The operator of such nonpool supply plant maintains books and records showing the utilization of all milk and milk products received at such plant which are made available if requested by the market administrator for verification purposes; and

(3) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(a) The gross payment made by the operator of such partially regulated distributing plant, less the value of the butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(b) If paragraph (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant, less the value of the butterfat at the butterfat price specified in § 1139.50(d), for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(c) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant, and like payments by the operator of the nonpool supply plant if paragraph (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of the state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision under another Federal milk order;

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plants by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Determine the value of the remaining pounds according to the difference between the appropriate Class prices applicable at the location of the partially regulated distributing plant (but not to be less than zero) as announced by the State order and as determined pursuant to § 1139.50.

§ 1139.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

[53 FR 4603, Feb. 17, 1988; 53 FR 6916, Mar. 3, 1988]

§ 1139.78 Charges on overdue accounts.

(a) Any unpaid balance due from a handler pursuant to §§ 1139.71, 1139.76, 1139.77, 1139.85 and 1139.86, or under this section shall be increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.

(b) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1139.85 Assessment for order administration.

A pro rata share of the expense of administration of the order shall be paid to the market administrator by each handler on or before the 14th day after the end of the month at the rate of 4 cents per hundredweight, or such lesser amount as the secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a handler defined in § 1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to § 1139.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1139.44(a)(7) and (11) and the corresponding steps of § 1139.44(b), except such other source milk that is excluded from the computations pursuant to § 1139.60(d) and (g);

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to § 1139.76(a)(1)(ii).

§ 1139.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk pursuant to § 1139.74 (other than milk of the handler's own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies acquired by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator to provide market information, and to verify or establish the weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

PART 1150—DAIRY PROMOTION PROGRAM

Subpart—Dairy Promotion and Research Orde

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AUTHORITY: Pub. L. 98-180, 97 Stat. 1128.

SOURCE: 49 FR 11816, Mar. 28, 1984, unless otherwise noted.

Subpart—Dairy Promotion and Research Order

DEFINITIONS

§ 1150.101 Act.

"Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1150.102 Department.

"Department" means the United States Department of Agriculture.

§ 1150.103 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1150.104 Board.

"Board" means the National Dairy Promotion and Research Board established pursuant to § 1150.131.

§ 1150.105 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§ 1150.106 United States.

"United States" means the 48 contiguous States in the continental United States.

§ 1150.107 Fiscal period.

"Fiscal period" means the calendar year or such other annual period as the Board may determine.

§ 1150.108 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to §§ 1150.270 through 1150.278 of this part.

§ 1150.109 Qualified State or regional program.

"Qualified State or regional program" means any State or regional dairy product promotion, research or nutrition education program which is certified as a qualified program pursuant to § 1150.153.

§ 1150.110 Producer.

"Producer" means any person engaged in the production of milk for commercial use.

§ 1150.111 Milk.

"Milk" means any class of cow's milk produced in the United States.

§ 1150.112 Dairy products.

"Dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products.

§ 1150.113 Fluid milk products.

"Fluid milk products" means those milk products normally consumed in liquid form as a beverage.

§ 1150.114 Promotion.

"Promotion" means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of, and demand for, dairy products generally.

§ 1150.115 Research.

"Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products.

§ 1150.116 Nutrition education.

"Nutrition education" means those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

§ 1150.117 Plans and projects.

"Plans and projects" means promotion, research and nutrition education plans, studies or projects pursuant to §§ 1150.139, 1150.140 and 1150.161.

§ 1150.118 Marketing.

"Marketing" means the sale or other disposition in commerce of dairy products.

§ 1150.119 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

NATIONAL DAIRY PROMOTION AND RESEARCH BOARD

§ 1150.131 Establishment and membership.

(a) There is hereby established a National Dairy Promotion and Research Board of thirty-six members. For purposes of nominating producers to the Board, the United States shall be divided into thirteen geographic regions and the number of Board members from each region shall be as follows:

(1) One member from region number one comprised of the following States: Washington and Oregon.

(2) Four members from region number two comprised of the following State: California.

(3) Two members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

(4) Two members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

(5) Four members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

(6) Six members from region number six comprised of the following State: Wisconsin.

(7) Three members from region number seven comprised of the following States: Illinois, Iowa, Missouri and Nebraska.

(8) Two members from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

(9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.

(10) Two members from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

(11) Three members from region number eleven comprised of the folowing States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Three members from region number twelve comprised of the folowing State: New York.

(13) One member from region number thirteen comprised of the folowing States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

(b) The Board shall be composed of milk producers appointed by the Secretary either from nominations submitted pursuant to § 1150.133 or in accordance with § 11150.136. A milk producer may be nominated only to represent the region in which such producer's milk is produced.

(c) At least every five years, and not more than every three years, the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume n the United States.

(d) The number of members for each region which shall serve on the Board shall be determined by dividing the total pounds of milk produced in the United States for the calendar year previous to the date of review by 36 which provides a factor of pounds of milk per member, and then dividing the total pounds of milk for each region by such factor.

(e) In determining the volume of milk produced in the United States, the Board and the Secretary shall utiize the information received by the Board pursuant to § 1150.171 and data published by the Department.

§ 1150.132 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the nitial Board shall serve proportionately, for terms of one, two and three years.

(b) Each member of the Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

(c) No member shall serve more than two consecutive terms.

§ 1150.133 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) Upon effectuation of this provision, the Secretary shall solicit nominations for the initial Board from all eligible organizations. If the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.

(b) After the appointment of the initial Board, the Secretary shall announce at least 120 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in paragraph (a) of this section. Nominations for such position should be submitted to the Secretary not less than 60 days prior to the expiration of such term.

(c) An eligible organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.

(d) Where there is more than one eligible organization representing producers in a specific region, they may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

§ 1150.134 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters where paragraph (b) applies.

§ 1150.135 Appointment.

From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1150.131(a).

§ 1150.136 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board.

§ 1150.137 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph when in the opinion of the chairman of the Board such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

[49 FR 11816, Mar. 28, 1984, as amended at 50 FR 9984, Mar. 13, 1985]

§ 1150.138 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a per diem allowance as recommended by the Board and approved by the Secretary, incurred by them in the performance of their duties under this subpart.

§ 1150.139 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules and regulations to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To disseminate information to producers or eligible organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(g) To establish advisory committees of persons other than Board members and pay the necessary and reasonable expenses and fees of the members of such committees;

(h) To recommend to the Secretary amendments to this subpart; and

(i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1150.152 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1150.140 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairman and such other officers as may be necessary;

(b) To appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(c) To appoint or employ such persons as it may deem necessary and define the duties and determine the compensation of each;

(d) To review all programs that promote milk and dairy products on a brand or trade name basis that have requested certification pursuant to § 1150.153, and to recommend to the Secretary whether such request should be granted;

(e) To develop and submit to the Secretary for approval, promotion, research, and nutrition education plans or projects resulting from research or studies conducted either by the Board or others;

(f) To solicit, among other proposals, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use;

(g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research and nutrition education plans or projects, and also including a general description of the proposed promotion, research and nutrition education programs contemplated therein;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional or State dairy promotion and research organizations or other organizations or entities for the development and conduct of activities authorized under §§ 1150.139 and 1150.161, and for the payment of the cost thereof with funds collected through assessments pursuant to § 1150.152. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budgets or budget which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(j) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(k) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(l) To give the Secretary the same notice of meetings of the Board, committees of the Board and advisory committees as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(m) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(n) To encourage the coordination of programs of promotion, research and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States.

EXPENSES AND ASSESSMENTS

§ 1150.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, after the first full year of operation of the order, administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal year. Such expenses shall be paid from assessments collected pursuant to § 1150.152.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1150.152, for administrative costs incurred by the Department after May 1, 1984.

§ 1150.152 Assessments.

(a) Each person making payment to a producer for milk produced in the United States and marketed for commercial use shall collect an assessment on all such milk handled for the account of the producer at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof and shall remit the assessment to the Board.

(b) Any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such milk at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof.

(c) In determining the assessment due from each producer pursuant to § 1150.152 (a) and (b), a producer who is participating in a qualified State or regional program(s) shall receive a credit for contributions to such program(s), but not to exceed the following amounts:

(1) In the case of contributions for milk marketed on or before May 31, 1984, up to the actual rate of contribution that was in effect under such program(s) on November 29, 1983, not to exceed 15 cents per hundredweight of milk marketed.

(2) In all other cases, the credit shall not exceed 10 cents per hundredweight of milk marketed.

(d) In order for a producer described in § 1150.152(a) to receive the credit authorized in § 1150.152(c), either the producer or a cooperative association on behalf of the producer must establish to the person responsible for remitting the assessment to the Board that the producer is contributing to a qualified State or regional program. Producers who contribute to a qualified program directly (other than through a payroll deduction) must establish with the person responsible for remitting the assessment to the Board, with validation by the qualified program, that they are making such contributions.

(e) In order for a producer described in § 1150.152(b) to receive the credit authorized in § 1150.152(c), the producer and the applicable qualified State or regional program must establish to the Board that the producer is contributing to a qualified State or regional program.

(f) The collection of assessments pursuant to § 1150.152(a) and (b) shall begin with respect to milk marketed on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to § 1150.152(a) and (b) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(h) Money remitted to the Board shall be in the form of a negotiable instrument made payable to "National Dairy Promotion and Research Board." Remittances and reports specified in § 1150.171 shall be mailed to the location designated by the Secretary or the Board.

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

(a) Any organization which conducts a State or regional dairy product promotion, research or nutrition education program may apply to the Secretary for certification of qualification so that producers may receive credit pursuant to § 1150.152(c) for contributions to such program.

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Conduct activities as defined in §§ 1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;

(2) Except for programs operated under the laws of the United States or any State, have been active and ongoing before enactment of the Act;

(3) Be financed primarily by producers, either individually or through cooperative associations;

(4) Not use a private brand or trade name in its advertising and promotion of dairy products unless the Board recommends and the Secretary concurs that such preclusion should not apply;

(5) Certify to the Secretary that any requests from producers for refunds under the program will be honored by forwarding to either the Board or a qualified State or regional program designated by the producer that portion of such refunds equal to the amount of credit that otherwise would be applicable to that program pursuant to § 1150.152(c); and

(6) Not use program funds for the purpose of influencing governmental policy or action.

§ 1150.154 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1150.155 Adjustment of accounts.

Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1150.152. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

§ 1150.156 Charges and penalties.

(a) *Late-payment charge.* Any unpaid assessments to the Board pursuant to § 1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(b) *Penalties.* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

PROMOTION, RESEARCH AND NUTRITION EDUCATION

§ 1150.161 Promotion, research and nutrition education.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1150.139, 1150.140 and this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research and nutrition education with respect to milk and dairy products; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of milk and dairy products and the creation of new products thereof, to the end that marketing and utilization of milk and dairy products may be encouraged, expanded, improved or made more acceptable. Included shall be research and studies of proposals intended to increase the use of fluid milk and dairy products by the military and by persons in developing nations and proposals intended to demonstrate the feasibility of converting nonfat dry milk to casein for domestic and export use.

(b) Each plan or project authorized under § 1150.161(a) shall be periodically reviewed or evaluated by the Board to insure that the plan or project contributes to an effective program of promotion, research and nutrition education. If it is found by the Board that any such plan or project does not further the purposes of the Act, the Board shall terminate such plan or project.

(c) No plan or project authorized under § 1150.161(a) shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

REPORTS, BOOKS AND RECORDS

§ 1150.171 Reports.

Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under § 1150.152 shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(a) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(d) The date any assessment was paid.

§ 1150.172 Books and records.

Each person who is subject to this subpart, and other persons subject to § 1150.171, shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necesssary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1150.173 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept conidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

MISCELLANEOUS

§ 1150.181 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1150.140(i);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1150.182 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§ 1150.183 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1150.184 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1150.181 shall apply to determine disposition of all such property.

§ 1150.185 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

§ 1150.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172, 1150.202, 1150.204, 1150.205, 1150.211 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0147.

[50 FR 9984, Mar. 13, 1985]

Subpart—Procedure for Conduct of Referenda in Connection with the Dairy Promotion and Research Order

SOURCE: 50 FR 9984, Mar. 13, 1985, unless otherwise noted.

§ 1150.200 General.

Referenda to determine whether eligible producers favor the continuance, termination or suspension of the Dairy Promotion and Research Order shall be conducted in accordance with this subpart.

§ 1150.201 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

(b) "Department" means the United States Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(e) "Order" means the Dairy Promotion and Research Order, as amended.

(f) "Board" means the National Dairy Promotion and Research Board established pursuant to § 1150.131 of the order.

(g) "Assessment" means the assessments that are collected and remitted to the Board pursuant to § 1150.152 of the order.

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative or other entity, and, for the purpose of this subpart, shall include only one member of a family that owns or operates a dairy farm business unit.

(i) "Producer" means any person engaged in the production of milk for commercial use and whose milk is subject to an assessment. In the case of a producer who is other than an individual, the business unit shall be regarded as the producer.

(j) "Cooperative association" means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act."

(k) "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(l) "Representative period" means the period designated by the Secretary pursuant to section 115 of the Act.

§ 1150.202 Associations eligible to vote.

(a) In conducting any referendum under the Act, the Secretary shall consider the approval or disapproval by any cooperative association engaged in a bona fide manner in marketing milk or the products thereof as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. In order to be eligible to vote in a referendum, a cooperative association must:

(1) Certify to the referendum agent, in conjunction with casting its ballot, that the association is organized under the provisions of the "Capper-Volstead Act" and that it is engaged in a bona fide manner in marketing milk or the products thereof;

(2) Certify to the referendum agent, in conjunction with casting its ballot, the number of producers on whose behalf the cooperative association is casting a ballot, that such producers are members of or under contract with the cooperative association and that the association was engaged during the representative period in marketing the milk of each of the producers for whom the cooperative association claims the right to vote;

(3) Furnish to the referendum agent, in conjunction with casting its ballot, a copy of the resolution authorizing the casting of the ballot;

(4) Certify to the referendum agent, in conjunction with casting its ballot, that the cooperative association has complied with the requirements of paragraph (b) of this section; and

(5) Agree to make available to the referendum agent necessary records and information pertaining to the representative period to validate the eligibility of the cooperative association to vote and to verify the number and identity of the producers on whose behalf the cooperative association claims the right to vote.

(b) Not later than 30 days prior to the beginning of the referendum, each cooperative association that elects to vote on behalf of its producers shall furnish each producer with the following information:

(1) A description of the question(s) upon which the referendum is being held;

(2) A statement of how the cooperative association intends to vote on each question on behalf of producers for whom it claims the right to vote;

(3) The procedure to be followed by a producer to cast an individual ballot if the producers so chooses;

(4) The time period within which individual ballots must be cast; and

(5) An official ballot for use by the producer.

(c) Not later than 30 days prior to the beginning of the referendum, each cooperative association shall notify the referendum agent as to whether or not the association intends to vote on behalf of its producers.

§ 1150.203 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 1150.204 Who may vote.

(a) Each producer shall be entitled to only one vote in each referendum, and no person who may claim to be a producer shall be refused a ballot. Any producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that such person is a producer. All information required on the ballot pertinent to the identification of the person voting must be supplied and certified to as being correct for the representative period in order for the ballot to be valid.

(b) Any cooperative association meeting the requirements specified in § 1150.202 may, if it elects to do so, vote and cast one ballot for producers who are members of or under contract with such cooperative association. Any such cooperative association casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent will not be permitted. However, a producer who is other than an individual may cast its ballot by a person who is duly authorized, and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer. All information required on the ballot pertinent to the identification of the person on whose behalf the ballot is cast must be supplied and certified to as being correct for the representative period in order for the ballot to be valid.

§ 1150.205 Duties of the referendum agent.

The referendum agent, in addition to any other duties imposed by this subpart, shall:

(a) Verify the eligibility of all producers and cooperative associations to vote in the referendum by reviewing all ballots cast to assure that each ballot:

(1) Is mailed within the prescribed time;

(2) Contains all certifications required attesting to the eligibility of each producer and cooperative association to vote; and

(3) Is completed with respect to all necessary information pertinent to the identification of the person voting so that additional verification can be conducted by the referendum agent to substantiate the eligibility of each producer and cooperative association to vote.

(b) Conduct further verification, as necessary, to determine the eligibility of each producer and cooperative association to vote. Such verification may be completed by reviewing readily available sources of information, including the following:

(1) Records of the Department;

(2) Producers' records maintained and made available by persons responsible for remitting the assessment to the Board;

(3) Producers' records maintained and made available by cooperative associations; and

(4) Any other reliable sources of information which may be available to the referendum agent.

(c) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) In the case of a producer that is other than an individual, the business unit shall be regarded as a producer;

(2) No person may vote more than once although such person may operate more than one farm, hold more than one health authority approval, or appear on the records of more than one person who is responsible for remitting an assessment to the Board;

(3) In the event that more than one individual of a family claims the right to vote and casts a ballot as, a producer, concurring votes of such individuals shall be treated as one vote while any conflicting vote shall thereby invalidate all ballots cast by such individuals.

(4) In the event that an individual producer, who is a member of a cooperative association that votes on behalf of its members who are producers, casts an individual ballot under the circumstances specified in § 1150.202(b), the individual ballot shall be counted and the total number of producers for whom the cooperative association is voting shall be reduced accordingly; and

(5) Whenever more than one cooperative association claims the right to vote for a producer, only the cooperative association which furnishes evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 1150.206 Date of referendum.

A referendum shall be held:

(a) During the 60-day period immediately preceding September 30, 1985;

(b) At the direction of the Secretary at any time after September 30, 1985; or

(c) After September 30, 1985, upon the request of a representative group comprising 10 percent or more of the number of producers subject to the order. Cooperative associations that are entitled to vote on behalf of producers under § 1150.202 may file such request for a referendum.

§ 1150.207 Notice of referendum.

The referendum agent shall provide adequate notice of the referendum by:

(a) Mailing to each known cooperative association a notice of the referendum which shall include:

(1) Instructions for completing the ballot;

(2) A statement as to the time within which the ballot must be mailed to the referendum agent;

(3) A ballot containing a description of the question(s) upon which the referendum is being held;

(4) A description of the eligibility requirements for a cooperative association to vote on behalf of producers who are members of or under contract with such cooperative association;

(5) A description of the certifications that must be made by a cooperative association to cast a valid ballot on behalf of producers; and

(6) A description of the requirements of § 1150.202(b) for a cooperative association that elects to vote on behalf of its members who are producers.

(b) Generally make material and information widely available to producers through the Department and other means. Such information shall include a notice of referendum and include:

(1) Instructions for completing the ballot;

(2) A statement as to the time within which ballots must be mailed to the referendum agent;

(3) A ballot containing a description of the question(s) upon which the referendum is being held;

(4) A description of the eligibility requirements for producers to vote; and

(5) A description of the certifications that must be made by a producer to cast a valid ballot.

(c) Given public notice of the referendum:

(1) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be completed and mailed to the referendum agent, eligibility requirements, required certifications to cast a valid ballot, where additional information, ballots and instructions may be obtained, and other pertinent information; and

(2) By such other means as the referendum agent may deem advisable.

§ 1150.208 Time for voting.

There shall be no voting except within the time specified by the referendum agent.

§ 1150.209 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§ 1150.202, 1150.204, 1150.205, and 1150.208. Ballots that are not valid shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving and the number of ballots cast disapproving shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(c) The referendum agent shall notify the Administrator of the number of ballots cast, the count of the votes, and the number of disqualified ballots. The referendum agent shall seal the ballots, including those marked "disqualified," the tabulation of ballots and the count of the vote, and shall transmit to the Administrator a complete detailed report of all actions taken in connection with the referendum together with all ballots cast and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots and votes cast.

§ 1150.210 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 1150.211 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 1150.212 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to Be Exempted From an Order

§ 1150.250 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1150.251 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead;

(d) "Judge" means any administrative law judge in the Office of Administrative Law Judges, United States Department of Agriculture;

(e) "Administrator" means the Administrator of the Department's Agricultural Marketing Service, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Administrator's stead;

(f) "Federal Register" means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501-1511), and acts supplementing and amending it;

(g) "Order" means any regulation or any amendment thereto which may be issued pursuant to the Act;

(h) "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order;

(i) "Proceeding" means a proceeding before the Secretary arising under section 118(a) of the Act;

(j) "Hearing" means that part of the proceeding which involves the submission of evidence;

(k) "Party" includes the Department;

(l) "Hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(m) "Presiding officer" means the administrative law judge conducting a proceeding under the Act;

(n) "Presiding officer's report" means the presiding officer's report to the Secretary and includes the presiding officer's proposed (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions and orders submitted by the parties; and

(o) "Petition" includes an amended petition.

§ 1150.252 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the Department's General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *An application to dismiss petition—Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Secretary for his consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders) and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However each reference to "marketing order" in the title shall mean "order."

Subpart—Procedure for Certification of Milk Producer Organizations

§ 1150.270 General.

Organizations must be certified by the Secretary that they are eligible to represent milk producers and to participate in the making of nominations of milk producers to serve as members of the National Dairy Promotion and Research Board as provided in the Dairy and Tobacco Adjustment Act of 1983. Certifications of eligibility required of the Secretary shall be conducted in accordance with this subpart.

§ 1150.271 Definitions.

As used in this subpart:

(a) "Act" means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;

(b) "Department" means the United States Department of Agriculture;

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the Secretary's stead;

(d) "Dairy Division" means the Dairy Division of the Department's Agricultural Marketing Service;

(e) "Producer" means any person engaged in the production of milk for commercial use;

(f) "Dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products; and

(g) "Fluid milk products" means those milk products normally consumed in liquid form as a beverage.

§ 1150.272 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provisions of this subpart.

§ 1150.273 Application for certification.

Any organization whose membership consists primarily of milk producers may apply for certification. Applicant organizations should supply information for certification using as a guide "Application for Certification of Organizations," Form DA-26. Form DA-26 may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

§ 1150.274 Certification standards.

(a) Certification of eligible organizations shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) Geographic territory covered by the organization's active membership;

(2) Nature and size of the organization's active membership including the total number of active milk producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the organization's operating funds are derived;

(5) Functions of the organization; and

(6) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk, and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(c) The Secretay shall certify any organization which he finds meets the criteria under this section and his determination as to eligibility shall be final.

§ 1150.275 Inspection and investigation.

The Secretary shall have the right, at any time after an application is received from an organization, to examine such books, documents, papers, records, files, and facilities of an organization as he deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the organization is eligible for certification.

§ 1150.276 Review of certification.

Certifications issued pursuant to this subpart are subject to termination or suspension if the organization does not currently meet the certification standards. A certified organization may be requested at any time to supply the Dairy Division with such information as may be required to show that the organization continues to be eligible for certification. Any information submitted to satisfy a request pursuant to this section shall be subject to inspection and investigation as provided in § 1150.275.

§ 1150.277 Listing of certified organizations.

A copy of each certification shall be furnished by the Dairy Division to the respective organization. Copies also shall be filed in the Dairy Division where they will be available for public inspection.

§ 1150.278 Confidential treatment.

All documents and other information submitted by applicant organizations and otherwise obtained by the Department by investigation or examination of books, documents, papers, records, files, or facilities shall be kept confidential by all employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in the issuance of general statements based upon the applications of a number of persons, which do not identify the information furnished by any one person.

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FINDING AIDS

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